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International Court of Justice

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OFFICIAL TRANSCRIPT OF THE INTERNATIONAL MILITARY TRIBUNAL IN THE MATTER OF THE UNITED STATES OF AMERICA, THE FRENCH REPUBLIC, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AND THE UNION OF SOVIET SOCIALIST REPUBLICS AGAINST HERMANN WILHELM GOERING ET AL, DEFENDANTS, SITTING AT NURNBERG, GERMANY, ON 16 JULY 1946, 1000-1700, LORD JUSTICE LAWRENCE PRESIDING.

DR. HANS KRANZBUEHLER (Counsel for the defendant Doenitz): Mr. President, Gentlemen of the Jury:

To sum up, I should like to remark as regards the conduct of German crimes against enemy merchant vessels: I believe that the German conception of the London Protocol of 1936, according to the position generally taken by the experts of the powers involved as well as according to the wellknown opinion of numerous and competent scientists of all countries, had no trace of dishonesty in it. If I were to express myself with caution, I would say that it is, legally at least, perfectly tenable, and thus not the slightest charge can be raised against the German Naval Command, if it issued its orders on a sensible and perfectly fair basis. We have shown that these orders were given only after such conditions had been created by the exposure of British measures as justfied the orders issued according to the concepts of German law.

Before I leave this subject I should like to recall to the Tribunal the special protection which the German orders provided for passenger vessels. These passenger vessels were excluded for a long time from all sinking measures, even when they sailed in an enemy convoy and, therefore, could have been sunk immediately, according to the British conception too. These measures point out especially clearly that the accusation of disregard and brutality is unjustified. The passenger vessels were only included in the orders concerning other vessels when in the spring of 1940 there was no more harmless passenger traffic at all, and just these ships, because of their great speed and heavy armaments, proved to be particularly dangerous enemies for submarines. If, therefore, Mr. Roger Allen's report cites as an especially good example of German submarine cruelty the sinking in the autumn of 1940 of the "City of Benares", then this example is not very happily selected, because the "City of Benares" was armed and went under convoy.

I shall turn now to the treatment of neutrals in the conduct of German submarine warfare, and I can at once point again in this connection to the

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example which Mr. Roger Allen holds up especially for the sinking of a neutral against international law. It is a question of the torpedoing of the Danish steamer "Vendia" which occurred at the end of September 1939. The Tribunal will recall that this ship was stopped in a regular way and was torpedoed and sunk only when it began preparations for ramming the German submarine. This occurrence led the German Government to protest to the Danish government on account of the hostile conduct shown by a neutral boat.

The analysis of this one example may show only how different things look if not only the result, namely the sinking of a neutral ship, is known but also the causes which led to this result. Until the last day of the war the fundamental order to the German submarines was in effect not to attack merchantmen recognized as neutral. There were some accurately defined exceptions to this order, exceptions of w hich theneutral powers had been notified. They affected in the first place ships which conducted themselves in a suspicious or hostile manner, and secondly ships in announced operational areas.

To the first group belonged, above all, those vessels which sailed in the war area with dimmed lights. On 26 September 1939 the commander of the submarine fleet asked the high command of the navy for permission to attack without warning vessels proceeding in the channel with dimmed lights. The reason was clear. It is there where at night the enemy's troop and material shipments took place through which the second wave of the British expeditionary army was ferried across the Channel to France. At that time the order still was in effect that French ships not be attacked at all. But since at night French ships could not be distinguished from English vessels, submarine warfare in the Channel would have had to be halted completely in compliance with this order. The Tribunal heard from a witness that in this way a 20,000 ton troop transport passed by the torpedo tubes of a German submarine unmolested. Such a happening in a war is grotesque and it goes without saying that, therefore, the naval command approved the request of the commander of the submarine fleet.

The prosecution has now made much ado about a note written on this occasion by an assistant at the Naval Command, Lieutenant Commander Fresch. Already the Chief of Section, Admiral Wagner, did not approve of the opinions

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expressed in it, and, therefore, they did not lead to corresponding orders. The order to attack blacked-out ships was issued by radio without any further explanation on the part of the Naval Command, and on 4 October it was extended to further regions surrounding the English coast, and again without any explanation in the sense of the above-mentioned note.

Examining the question of blacked-out vessels from the legal standpoint, Vanselow , the wellknown expert on the law of naval warfare, makes the following remark:

"In war, a blacked-out vessel must in case of doubt be considered as an enemy warship. A neutral, as well as an enemy merchant vessel navigating without lights, voluntarily renounces during the hours of darkness all its right to immunity from attack without being stopped."

I furthermore refer to Churchill's declaration made in the House of Commons on 8 May 1940, concerning the action of British submarines in the Skagerrak. Since the beginning of April, the latter had had the order to attack all German vessels without warning during the daytime, and all vessels and so allneutrals, as well at night. This implies recognition of the legal standpoint. It even goes beyond the German order, insofar as neutral merchant vessels navigating with all lights on were sunk without warning in these waters during the night.

In view of the clear legal aspect it would hardly have been necessary to give an express warning to neutral shipping against suspicious or hostile conduct. Nevertheless, the naval command (Seekriegsleitung) saw to it that this was done.

On 28 September 1939 the first German note was sent to the neutral governments with the request that they warn their merchant ships against any suspicious conduct such as changes in course and the use of wireless upon sighting German naval forces, dimming, or non-compliance with the request to stop etc. These warnings were subsequently repeated several times and the neutral governments passed them on to their captains. All this has been proved by documents which have been submitted. Therefore, if, as aresult of suspicious or hostile conduct,neutral ships were treated like enemy ships, they have only themselves to blame for it. The German submarines were not allowed to attack

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any one who as a neutral maintained a correct attitude during the war and there are hundred s of examples to prove that such attacks never did occur.

Now I wish to deal with the second danger which threatened neutral shipping: the zones of operations. The actual development was briefly summed up as follows:

On 24 November 1939 the Reich Government sent a note to all seafaring neutrals in which it points to the use of enemy merchant ships for attacking purposes as well as to the fact that the Government of the United States had barred to its own shipping a carefully defined naval zone around the Central European coast, the so-called USA-combat zone.

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As the note states, these two facts give the Reich Government cause "to warn anew and more strongly that in viewof the fact that the actions are carried on with all means of modern war techniques and in view of the fact that these actions are increasing in the waters around the British Isles and near the French coast, these waters can no longer be considered safe for neutral shipping."

The note thereupon recommends for the shipping between neutral powers certa sea routes which are not endangered by German means of naval warfare and, fur thermore, it recommends legislative measures according to the example set by the USA. In concluding the Reich Government rejects the responsibility for consequences which would follow if warning and recommendation should not be complied with. This note constituted the announcement of an operational area of the US combat zone with the limitation that only in those sea zones which are actually endangered by actions against the enemy, consideration co not longer be given to neutral shipping.

The Naval High Command (Seekriegsleitung) indeed observed this limitation. In the beginning the neutral powers had more than six months in which to take the measures recommended by the German Government for the safety of their own shipping and to direct their shipping along the routes announced. Starting in January, the German Command then opened up to the German naval forces within the operational area announced, accurately defined zones aroun the English coast in which an attack without warning against all ships sailing there was admissible. THe naval chart on which these zones had been marked was submitted to the Tribunal. The chart shows that gradually these zones and only these were taken in which, as a result of mutually increasing attacks and defensive actions at sea and in the air, engagements continually occurred so that every ship entering this area was operating with the naval forces of both powers nearby. The last one of these zones was designated late in May 1940. These zones were not and needed not be announced because they were all within the area of operations as proclaimed on 24 November 1939. The distance of these zones from the enemy coast was on the average 60 sea miles. Outside these boundaries the declaration concerning the area of operations of 24 November was not observed, i.e., neutral ships could be stopped and sunk only in accordance with the Prize Ordinance.

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This situation changed when, after the collapse of France in the summer of 1940, the British Isles became the center of the war. On 17 August 1940 the Reich Government sent to the neutral governments a declaration in which the entire area of the US combat zone around England without any limitation was designated as operational area.

"Every ship", so the note reads, "which sails in this area exposes itself to destruction not only by mines, but also by other combat means. Therefore the German Government warns once more, and urgently against entering the endangered area."

From this time on the area was fully utilized and the immediate use of arms against the craft encountered in it was permitted to all naval and air forces insofar as special exceptions had not been ordered. The entire development described was openly dealt with in the German press and Grand Admiral Raeder granted interviews to the foreign press on this subject which clearly showed the German viewpoint. If, therefore, in the sea zones mentioned neutral ships and crews sustained losses, at least they cannot complain about not having been warned explicitly and urgently beforehand.

This statement alone has not much meaning in the question of whether areas of operation as such constitute and admissible measure. Here, too, the prosecution will take the position that in the London Protocol of 1936, no exceptions of any kind were made for areas of operation and, therefore, such exceptions naturally do not exist.

As is well known, operational areas were first proclaimed in the first world war. The first declaration of this kind came from the British Government on 2 November 1914 and designated the entire area of the North Sea as a military area. This declaration was justified on the basis that it was a reprisal against alleged German violations of international law. Since this justification naturally was not recognized, the imperial government replied on 4 February 1915 by designating the waters around England as a military area. On both sides certain extensions were made subsequently. I do not wish to go into the individual formulations of these declarations and into the sagacious legal deductions which were made from their wording for or against the admissibility of these declarations.

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Whether these areas are designated as military area, barred zone, operation area or danger zone, the point always was that the naval forces in the annou ced area had permission to destroy any ship encountered there. After the world war the conviction of naval officers and experts in international law alike was in general that the operational area would be maintained as a means of naval warfare. The development typical for the rules of naval warfare. The development typical for the rules of naval warfare was confirm here, namely, that the modern technique of war forcibly leads to the use of war methods which at first are introduced on the grounds of being reprisals, but which are gradually being used also without such a justification a: are recognized as legitimate.

The technical reasons for such a development are very obvious. The improvement of mines made it possible to endanger large sea areas by mines. But if it was admissible to destroy by mines every ship sailing, despite warning, in a designated sea area, one could see no reason why other means of naval warfare should not be used in this area in the same way. Besides, the traiditional institution of the blockade directly outside enemy ports and coasts by mines, submarines and aircraft was practically made impossible so that the sea powers had to look for new ways to bar the approach to enemy coasts effectively. Consequently, it was these necessities which were the compelling factors in bringing about the recognition of the operational area:

It is true that there was by no means a uniform interpretation concerning the particular prerequisites under which the declaration of such areas would be considered admissible, just as there was none with regard to the designation which the belligerent power must choose. Also the conferences of 1922 and 1930 did not change anything in that respect. This is shown by the efforts which were also after 1930, exerted especially by American politicians and experts in international law for a solution of this question.

Unfortunately, there is no time here to discuss these questions in detail and, therefore, it must suffice for the purposes of the defense to state that during the conferences in Washington in 1922 and in London in 1930 the operational area was an institution known to all powers concerned, an institution operating in a way which had been determined by both sides in the first world war to the effect that all ships encountered in it would be subject to immediate destruction.

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If this institution were to have been abolished in the mentioned conference especially in the treaty of 1930, an accord should have been reached on this question, if not in the text of the agreement at least in the negotiations. The transcripts show nothing of the kind. The relationship between operational area and London Protocol remained unsttled.

The French Admiral Caston has the same viewpoint. Admiral Bauer, Commander of Submarines in the first world war, in 1931 stated his disapproval of the application of the London rules in the operational area and this opinion was absolutly known to the British Navy. In a thorough study of Ern Schmitz of 1938 a merchant vessel which enters an operational area despite general prohibition is regarded as being guilty of "persistent refusal to stop". The powers"participating in the conferences in Washington and London consciously avoided, in these as in other cases, to start contraversial questions on which no accord could be reached. Therefore, every power maintained a free hand to champion in practice that opinion which corresponded to its own interests.

There was no doubt left in the minds of the participants on this point and I have as a witness for this no one less important than French Minister for Foreign Affairs of that time, Briand. In his instruction of 30 December 1921 to Sarraut, the French chief delegate in Washington, he announces the basic readiness of concluding an agreement about submarine warefare. However he then points out a series of questions as being essential parts of such an agreement, among them the arming of merchant ships and the defenition of combat zones. The instruction goes on:

"It is indispensable to examine these questions and to solve them by a joint agreement, for surface vessels as well as for submarines and aircraft in order not to establish ineffective and deceptive stipulations."

Particularly with respect to the question concerning the area of operations Briand characterizes the submarine rules as being "ineffective and deceptive". After this testimony nobody will be able to designate the German conception as fraudulent according to which ships in declared areas of operation are not under the protection of the London Protocol. Even Mr. Roger Allen's report concedes this.

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Therefore the attacks of the Prosecution seem to be directed, as I understand from the cross examination, less against the existence of such zones than against their extent and wehave repeatedly heard the figure of 750.000 square miles. Incidentally, it is to be noticed that this figure includes the land area of Great Britain, Ireland and Western France; the area of water alone amounts only to 600.000 square miles. I quite agree, however, that through operational areas of such a size the interests of the neutrals werebadly prejudiced.

The more remarkable is the fact that the above mentioned American draft for an agreement of 1939 which concerns the rights and duties of Nautrals provides for a considerable expansion of the operational area. Such an area which is termed "Blockade Zone" in the draft isto include the waters up to a distance of 50 sea miles from the blockaded coast.

THE PRESIDENT: Dr.Kranzbuehler, the Tribunal would like to know what that American draft of 1939 is, to which you refer.

DR. KRANZBUEHLER: I have already mentioned this draft set up by American professors, dealing with the rights and duties of neutrals in sea warfare, the professors Jessup, Orchard and Charles Warren. It was published in the American Journal of International Law of July 1939.

THE PRESIDENT: Jessup and Warren, you say?

DR.KRANZBUEHLER: Jessup, Orchard, and Charles Warren.

THE PRESIDENT: Thank you.

DR. KRANZBUEHLER: This would correspond to a large extent to the area of waters in which surprise attacks were authorized until 17 August 1940 it covers 200.000 square sea miles approximately. However it seems to me almost impossible to approach from a scientific angle such an eminently practical question as that of the expansion of an operational area. As long as this question is not settled by an agreement, the actual determination will always be a compromise between what is desirable from a military point ofview and what is politically possible. It seems to me that laws are only violated when a belligerent misuses his power against neutrals. The question as to whether such a misuse exists should be made dependent upon the attitude of the opponent towards the neutrals as well as upon the measures taken by the neutrals themselves.

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THE PRESIDENT: One minute. Dr. Kranzbuehler, doesn't the right to declare a certain zone as an operational zone depend upon the power to enforce it?

DR. KRANZBUEHLER: Mr. President, I do not quite follow the sense of your question.

THE PRESIDENT: Well, your contention is, apparently, that any state at war has a right to declare such an operational zone as it thinks right and in accordance with its interests, and what I was asking you was whether the right to declare an operational zone, if there is such a right, doesn't depend upon the ability or power of the state declaring the zone to enforce that zone, to prevent any ships coming into it without being either captured or shot.

DR. KRANZBUEHLER: In my opinion, Mr. President, there are no unified estimates available in science regarding that question. Contrary to the blockade zone in a classical sense, where full effect is necessary, the operational zone only provides for effective endangering through continuous combat actions. This effective threat was present in the German operational zone, and I refer in that connection to theproclamation of President Roosevelt regarding the United States of America, combat zone where the entering of that zone was prohibited, pointing out that because of the combat actions there shipping must of necessity be continuously endangered.

THE PRESIDENT: The proclamation of the President of the United States was directed, was it not, solely to United States vessels?

DR. KRANZBUEHLER: Yes, indeed. I amreferring only to my establishing proof of the German statement that this area was endangered, and this effective endangering seems to be the only legal and necessary prerequisite for declaring an operational zone.

THE PRESIDENT: Would you say that it was a valid proclamation if Germany had declared the whole of the Atlantic to be an operational zo

DR. KRANZBUEHLER: Mr. President, in that case I would say that at the beginning of the war that wuld not have been possible, for the Germ armed forces at that time were, without doubt, not an effective danger to the entire sea traffic. I am of the opinion that with the increase in the number of U-boats on the one hand, and with the increase ofdefense by

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hostile aircraft on the other hand, the danger zone of course expanded, and therefore the development of this war quitelogically led to the point that operational zones gradually were extended and enlarged.

THE PRESIDENT: Do you mean, then, that you are basing the power of the state to declare a certain zone as an operational zone not upon the power of the state to enforce its orders in that zone, but upon the possibility of danger in that zone?

DR. KRANZBUEHLER: Yes.

THE PRESIDENT: You say it depends upon the possibility of danger in the zone?

DR. KRANZBUEHLER: I would not say the possibility of danger, Mr. President, but the probability of danger, and the impossibility of the belligerent's protecting neutral shipping against this danger.

THE PRESIDENT: May I ask you what other legal basis there is for the theory you are putting forward, other than the adoption of the blockade?

DR. KRANZBUEHLER: Mr. President, I am referring, as a legal basis, to the practice of the First World War, the practice that was current then, and thestatements made by scientists after the First World War, and I am referring to the generally recognized rules about mined areas. The mined areas, for a fact, proved to be operational zones in this war, in which every means of sea warfare was used. I shall later refer to this topic once more.

THE PRESIDENT: Thank you.

DR. KRANZBUEHLER: During theproduction of documents, the Tribunal has eliminated all those which I intended to utilize in order to prove that British naval warfare also paid no attention to the interests of neutrals when they were in contradiction with their own interests. If it is the Tribunal's wish, I will not go into the details of the British measures and in summing up I will mention them only in so far as they are indispensable for the legal argumentation. The following points are the essential ones:

1) The British regulations of 3 September 1939 concerning contraband goods which practically prevented neutral mercantile traffic with

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Germany through the introduction of the so-called"hunger blockade".

2) The decree concerning control ports for contraband goods compelled neutral ships to make great detours through the middle of the war zone, to which must be imputed without doubt a series of losses of neutral ships and crews.

3) The introduction of an export-blockade against Germany on 27 November 1939 by means of which the importation of German goods was made impossible for neutrals.

4) The introduction of the Navicert-System in connection with the black lists which put the whole of neutral trade under British control and which made ships which did not accept this system liable to be seized and confiscated.

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I am not considering the question here whether these British measures towards neutrals were admissible or not from the point of view of international law. In any case the neutrals themselves considered many of them inadmissible and there was hardly any which did not arouse more or less vehement protests, as for instance on the part of Spain, the Netherlands, Soviet Russia and the United States. From the beginning, the British Government on its side had prevented any legal examination of its measures by freeing itself from the optional clauses of the Permanent International Tribunal at the Hague, through a note of 7 September 1939. This step was expressly based on the necessity of providing the British Navy with full freedom of action.

On the British side, the fact was emphasized in the First World War already and has been emphasized eversince that British measures did indeed prejudice the interests and possibly the rights, too, of the neutrals. However they did not imperil either the ships or the crews and are therefore considered morally superior to the inhuman German measures. First, as mentioned before, the obligation of entering control ports was dangerous for neutral ships and crews and for this very reason neutral countries protested against it. But apart from this, it seems to me that the actual difference between the British and German measures for blockading the adversary are not founded upon moral differences but rather upon differences in their sea power. In the waters where the British Navy did not exercise naval supremacy, namely around the coasts we were occupying as well as in the Baltic Sea, it used the same methods of naval warfare as we did.

In any case, the official German opinion was that the British control measures against neutrals were inadmissible, and the Reich Government formulated against the neutral powers the accusation that they protested indeed but actually submitted to the British measures. This is clearly stated in the proclamation issue on the occasion of the proclamation of the blockade on 17 August 1940. Consequently, the following facts confronted the German Naval Command:

1) A legal trade between the Neutrals and the British Isles no longer existed. On the ground of the German answers to the British stipulations concerning

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contraband goods and the British export blockade, any trade to and from England was contraband trade, therefore illegal from the point of view of international law.

2) The Neutrals submitted, in practice, to all British measures even when these measures were in contradiction with their own interests and their own conception of legality.

3) Thus, the Neutrals directly supported British warfare. For, by submitting to the British control system in their own country, they saved the British Navy the use of large fighting forces which, according to the hitherto existing international law should have exercised the trade control at sea and which were now available for other war tasks. Therefore, the German Command, in determining its operational area in order to prevent the illegal traffic from reaching England, saw no reason for giving preference to the considerations towards the neutrals, to the detriment of its own military requirements. This all the less as the neutral shipping, which despite all warnings continued to travel to England, took big money for this increased risk and still considered therefore the trade with England as a lucrative business.

In addition to that, the most important neutrals took themselves measure which can be regarded as a completely new interpretation of the existing laws of naval warfare. All American countries jointly proclaimed the Pan-American safety zone, an area along the American coast up to a distance of approximately 300 sea miles. In these waters, comprising altogether several million square miles, they ask the belligerents to give up the exercise of those rights which according to the hitherto existing International Law naval forces of the belligerents were authorized to apply to neutrals. On the other hand, as I have already mentioned, the President of the United States prohibited, on 4 November 1939, U.S. citizens and ships to travel within an area of waters expanding over approximately 1 million square miles along the European coast. Thus the development of the laws of naval warfare, under leading participation of the neutrals, forcibly led to a recognition of large areas reserved either for the purpose of safety or for that of combat.

At the same time the American President explicitly stated in his

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proclamation that the maritime zone he had had closed was endangered by combat action as a result of technical developments. The proclamation, thereby, only took into consideration the development of modern weapons, the long-range coastal artillery, which for example could easily fire across the English Channel, the invention of locating devices, which permitted land-supervision of maritime traffic over dozens of sea-miles, and particularly the increased speed and range of aircraft.

From this development, the German Naval Command drew the same conclusion as the above mentioned neutrals, namely that defense and offense would necessarily have to cover large maritime areas in this war. It was, therefore, not from choice that the German operational area, which the Prosecution objects to, grew to such a size, it was only because it was adopting itself to a system which was also recognized by the other powers as legitimate.

In order to examine the legality of the German measures on the basis of enemy methods, may I ask the Tribunal to recall the naval chart on which the British zones of warning and danger are marked. These zones cover about 120,000 square sea miles. Even if these dimensions are smaller than those of the German operational area, it seems to me that the difference between 100,000 and 600,000 square miles is not so much a question of legal judgment as one of coastal length and of strategic position on the sea. The observation is confirmed by the American practice against Japan, such as Admiral Nimitz has professed.

He says:

"In the interest of the conduct of operations against Japan the area of the Pacific Ocean is declared a zone of operations."

This zone of operations covers more than 30 million square miles. All ships in it with the exception of their own and Allied, as well as hospital ships, were sunk without warning. The order was issued on the first day of

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the war, on 7 December 1941, when the Chief of the Naval High Command ordered unrestricted submarine warfare against Japan.

It is not my business to examine whether this order, issued on the first day of the war, is to be looked upon and justified as a measure of reprisal. For me the important thing is to show how it worked out in practice and this is unequivocal.

The Prosecution attaches special blame to the orders to carry out surprise attacks in the operational areas, if possible unnoticed, so that mine hits may be pretended. Orders to this effect existed for the period from January until August 1940, i.e. during the period when submarines were permitted to act without warning not in the whole operational area of 24 November 1939 but only in the especially defined areas below the English coast. In this camouflage the Prosecution sees proof of a bad conscience and thereby the consciousness of wrong doing. The real reasons for the measures ordered were of a twofold nature: military and political. For the admirals concerned the military reasons stood, of course, in the foreground.

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and the commander of the submarine fleet also knew only these reasons. The enemy was to be left in uncertainty as to what weapons of naval warfare had caused his losses and his defense was to be led astray in this manner. It is self-evident that such misleading of the enemy is fully justified in time of war. The measures had the desired military success and in numerous cases the British Navy employed flotillas of mine sweepers, where a ship had been torpedoed, and conversely started a submarine chase where a loss had occurred through mine hits.

For the Supreme Command, however, it was not the military but the political reasons which were the determining factor. These invisible attacks were meant to give an opportunity of denying before neutrals that the sinkings were due to submarines, and of tracing them back to mines. This actually happened in some cases. Does that now mean that the German Government itself considered illegal the use of surprise submarine action within the operatic area? I do not think so.

In view of the repeated accusations which the Prosecution has built up here and elsewhere from the camouflaging of measures, the denial of facts, I feel obliged to make a few remarks on the point as to whether there is any obligation at all in international politics to tell the truth. However, it may be in peacetime, in time of war at any rate one cannot recognize any obligation to tell the truth in a question which may be of advantage to the enemy. I need only to point to Hugo Grotius who says:

"One may conceal the truth wisely. Dissimulation is absolutely necessary and unavoidable."

What would it have meant for the military situation if U-Boat sinkings in the instances dealt with here, had not been denied but admitted instead? First of all, since that would have come to the knowledge of the enemy, too, we should have lost the military advantage which lay in the misleading of his defense. Furthermore - and this is no less important - we might quite possibly have furnished our enemy with allies who would have helped him with propaganda if not with their weapons. In view of the fact

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that some of the neutrals concerned were so dependent on England, they would probably not have recognized the German viewpoint as to the legitimacy of the operational areas, especially since this viewpoint was contrary to their own interests. It would have led to political tensions and, possibly, to armed conflicts. Our enemies would have derived the only immediate advantage from it. From the standpoint of the law this endeavor to camouflage the use of submarines even from the neutrals, does not seem objectionable to me. But if the Prosecution uses this with the intention of moral defamation, it applies standards here which heretofore have never been applied to the conduct of a war and to the politics of any other country in the world. It was just in naval warfare in which the same methods of camouflage were employed by the other side, too. The operational areas which Great Britain declared around the European coasts from Norway to Biscay were, with the exception of the Biscay area declared mine danger zones. But we know from Churchill's statement of May 1940 as well as from testimonies of witnesses that in these areas there were unlimited attacks with submarines, speedboats and above all with aeroplanes. Consequently, very often neither the German command nor the neutral country which had been attacked know whether a loss sustained in such an area really should be traced back to a mine or to another weapon of naval warfare. To conclude that the camouflaging of a measure constitutes its illegality thus seems to me entirely without basis.

Within the German operational zone all ships were on principle attacked without warning. However, orders had been given to make exceptions in the case of certain neutrals, such as, in the beginning, Japan, the Soviet Union, Spain, and Italy. In this measure the Prosecution saw the endeavor of the Naval Command to terrorize the smaller neutral countries whereas it dared not pick a quarrel with the big ones. The real reason for this differential treatment is given in Document UK 65 in the notation on the report which the Commander-in-Chief of the Navy made to

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the Fuehrer on 16 October 1939. According to this notation the neutral governments mentioned are requested to declare that they will not carry contraband of war, in every other respect they will be treated just like any other neutral country. This means that the reason for the different treatment was merely that certain countries were willing and in a position to forbid their boats to carry contraband of war to England, whereas others could not or would not do it because of their political attitude or their economic dependence on England. Therefore, it is not a question of terrorizing the smaller neutrals and the sparing of the bigger ones, but of preventing traffic in contraband of war and the sparing of legal commercial trade. Since no general legal maxim exists which compels the belligerent power to treat all neutral powers alike, no objection can be raised on the basis of international law. It would indeed be strange if here, in the name of humanity, the demand were made that German submarines should have sunk even those ships which they did not want to sink at all.

The Tribunal saw from the Standing War Orders submitted that during the further course of the war even the small powers which were the only neutral ones left, could, by virtue of shipping agreements, cross the operational area along certain routes without being molested by German submarines. In this way, for instance Sweden and Switzerland as well as Turkey could carry on their maritime trade during the entire war.

Outside the operational area announced the German submarines were never permitted to attack neutral ships. In this respect the naval command desisted from waging any submarine warfare against neutral merchant shipping, since enemy air surveillance made stopping and searching too dangerous for German submarines. Against the disadvantage of submarine warfare within the operation area, the neutrals had, outside the area, the advantage of remaining completely unmolested, even if they were shipping contraband goods and were liable to be sunk because of this without being

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stopped. Thus, the neutral vessel outside the operational area was only in danger if it behaved in a suspicious or hostile way or if it was not clearly marked as neutral. And the German Naval Command again and again called the attention of the neutral powers to this necessity.

In this connection I must mention the order of 18 July 1941, according to which United States vessels within the operational area were assimilated to all other neutrals, i. e. they could be attacked without warning. The Prosecution has seen in this an especial proof that the submarine warfare against neutrals was waged in a 'cynical and opprtunist' way. If this is to mean, that it was also influenced by political considerations, then I am ready to admit it. But I do not consider it a reproach; since war itself is a political weapon, it is in keeping with its essence, if individual sectors of it are placed under the leadership of politics. In particular, no reproach should be seen in the orders of the German leadership as regards the utilization of submarines against the United States, because it is just they which are a proof of the efforts to avoid any conflict with the United States.

As is known to the Tribunal from documents and the testimonies of witnesses the ships of the United States during the first years of the war were exempt from all measures of naval warfare, and this was true as well when, contrary to the original American legislation, they sailed into the USA combat zone and thus into the German operational area in order to carry war material to England. This policy was changed only when in addition to the many unneutral acts of the past the active employment of the American Navy had been ordered for the protection of British supply lines. Well known are the statements of President Roosevelt which he made at that time about the "bridge of boats over the Atlantic" and the support which should be given to England "by every means short of war." It may be doubtful whether the realistic attitude which the USA Naval and air forces were ordered to take, at that time, did not already constitute an illegal war as was claimed just

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now by some American sources. At least the United States had abandoned its neutrality and claimed the position of a "Non-belligerent", which was also a new aspect of International Law in this war. If in this connection one wished to raise the charge of cynicism, it should be directed against the orders which were issued in justification of the consequences of the American attitude.

I have endeavored to present the Tribunal with a survey of the essential orders issued, and to say a few things in respect of their legality. No doubt, there were instances of attacks on ships which according to the orders mentioned should not have been attacked. There are only a few such cases, and some of them have been brought up at this trial. The best known concerns the sinking of the British passenger vessel "Athenia" on September 3, 193 by the "U-30" under the command of Lieutenant Captain Lemp. The sinking of this ship was due to the fact that the commander took it by mistake for an auxiliary vessel. If the Tribunal still hesitated to believe the concurring statements of all the witnesses heard here in this critical and so much talked of case, these doubts would be removed by the behavior of the same commandant in the days and weeks following the sinking. Lt. Captain Lemp, as the log of "U 30" of that time shows, adhered strictly to the prize ordinance and from this log I was able to submit several examples of the fair and gentlemanly conduct of German commandants even when by such conduct they greatly endangered their submarines

Only on the return of the U 30 from its operations at the end of September 1939 were the Commander of submarines and the Commander-in-Chief of the navy fully informed of the whole affair of the sinking of the "Athenia." Upon his return the commandant reported to the U boat commander the mistake which he himself recognized as such and was sent to Berlin to report in person.

Dr. Siemers will deal with the political development of this matter. I only mention the military occurrences: Admiral Doenitz received the following communication from the Naval High Command:

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1. That the affair be further dealt with politically in Berlin.
2. That Court-martial proceedings were not necessary since the commandant acted in good faith.
3. That the entire matter be kept in strict secrecy.

On the grounds of this order the U-boat commander gave orders for the report on the sinking of the "Athenia" to be removed from the log of the "U 30" and gave instructions that the log be completed in such a manner as to make the absence of an entry inconspicuous.

As the Tribunal has seen, this order was not carried out satisfactorily, obviously for the reason that the officer in charge had no experience whatever of such measures.

The Prosecution pointed out this changing of the war diary as a particularly criminal act of falsification. This it seems to me, is based on a misunderstanding of the facts. The war diary is nothing else but a military report by the commandant to his superior commands. What occurrences should or should not be included in reports of this kind is not decided by any legal or moral principle but is solely a matter of military regulations. The war diary was meant to be secret; however, it was - like many secret matters - accessible to a very large group of people. This is already apparent from the fact that it had been issued in 9 copies, of which some were intended not only for the higher staff but for schools and for training flotillas as well. Therefore, whenever an occurrence was to be restricted to the knowledge of a small group of individuals, it was not to be reported in the war diary. Since the war diary was kept consecutively, the missing period necessarily had to be filled in with another, ergo, incorrect entry. I can see nothing immoral in such a measure, much less anything illegal. As long as there is secrecy in time of war - and this is the case in all countries - it means that all facts cannot be told to everybody, and therefore one sometimes has to make incorrect statements, too. A certain moral offense could perhaps be seen in such action if thereby a falsification of his-

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tory for all times had been intended. This, however, was by no means the case. The Commandant's report in regard to the sinking of the "Athenia" was of course submitted in the original form to the immediate superiors, the Commander of the U-boats and the Commander-in-Chief of the Navy, and was also kept there.

I should like further to say briefly, that a general order, not to enter certain happenings into the war diary, has never existed.

The "Athenia" case shows one more thing: the manner in which the compliances of U-boat commandants with issued orders was enforced. In spite of the justified conception of the Naval High Command that the commandant acted in good faith, he was punished with arrest by Admiral Doenitz because by employing greater caution he perhaps might have recognized that this was not an auxiliary cruiser. Punishment was meted out in other cases too, where the orders had been mistakenly violated.

The Tribunal knows the wireless communications of September 1942, by which on the occasion of the sinking of "Monte Gorbea" the commandant had been informed that upon his return he will have to face court martial proceedings for violation of orders regarding the conduct toward neutrals. All commandants received notice of this measure.

The Tribunal will please consider what such strict threats mean to a commandant at sea. If the directives of the American Manual for Courts-Martial were to be considered as a basis, then court martial proceedings against officers should only be initiat in cases where dismissal from the service seems warranted.

That should never be the case when the violation of an order is an accidental one. For a commander who is supposed to make war and gain successes with his soldiers, it is extremely hard and, in fact, under certain circumstances actually a mistake to have one of his commanders on his return from a successful operation tried before a court martial because of one failure which occurred in that action.

Every military leadership acts in accordance with these principles. In this connection I will refer to the unlimited commendation which the commander of the British destroyer "Cossack" received for setting free the prisoners of the "Altmark" in spite of the incidents which occurred during this action and which were probably regretted by the British, too.

I had to go into these matters in order to meet the accusation that any sinkings carried out against orders were sanctioned afterwards by the High Command in so far as not drastic steps were taken against the commanders. Especially in the field of submarine warfare compliance with orders issued was ensured by the continuous personal contact of the commanders with their commander. After the conclusion of every enemy operation, an oral report had to be made, and all measures taken were subjected to sharp criticism, simultaneously whilst preventive instructions were given at the same time for future behaviour.

The German submarines undertook many thousands of combat operations during this war. In the course of them, orders issued were violated only in very rare instances. If one considers how difficult it is for a submarine to establish its exact position and the boundaries of an operational area and to distringuish an armed from an unarmed merchant vessel, a passenger ship from a troop transport, or a neutral from an enemy ship, the low number of sinkings which were considered illegal by the Germans too, must be taken as proof of an especially effective and conscientious leadership. After this

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discussion of the factual development of German submarine warfare, I still have to deal with the accusations built up by the prosecution from some preparatory deliberations on the subject of the organization of submarine warfare.

Simultaneously with the combat instructions of 3 September 1939, in which German submarines were ordered to comply in their operations strictly with the Prize Ordinance, an order was prepared in the Naval High Command decreeing action without warning in case the enemy merchantman were armed. In addition to this, during the first days of the war there was an exchange of correspondence with the Foreign Office on the subject of declaring prohibited zones.

The Prosecution looks upon these two documents as proof of the will to conduct a war against International Law from the very start. I on the other hand, regard these same documents as proof of the fact that the Naval Command was fully unprepared for a war with England, and that it was only when the British had already declared war that it began to set about thinking in the most primitive way how such a war should be conducted. Since neither surprise attacks on armed merchant vessels no the declaration of prohibited zones violate International Law, a belligerent should be allowed just to think even on the outbreak of war if and when he wants to make use of these opportunities. As we know from the above-mentioned orders of the British Admiralty as early as 1938 the latter had made a thorough study of all the possibilities resulting from the war upon commercial shipping and had been worked out in a practical way.

This same standpoint holds good also for the memorandum of the Naval High Command of 15 October 1939, which has been quoted several times by the Prosecution. Its very heading shows that it is a study.

"Possibilities for the Intensification of Naval Warfare."

In accordance with the heading, the memorandum revelas an examination of military demands for effective naval warfare ?

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against England and the legal possibilities for fulfilling these demands. The result was the order of 17 October 1939, decreeing the immediate use of arms against all enemy merchant vessels, justification for which resulted, as we have already shown, from their having been armed and incorporated into the military system. Beyond this, no intensifying measures were recognized as justified for the time being, and the suggestion made was to wait and see what the further conduct of the enemy would be like.

One sentence in this memorandum arouses special distrust on the part of the Prosecution. It says that naval warfare must be kept as a matter of principle within the frame-work of existing International Law. But measures which might result in successes decisive for the war would have to be taken, however, even if new laws of naval warfare were created thereby. Does this really constitute a renunciation of International Law? Quite the contrary. A departure from existing International Law is made depedent only on two quite limited conditions:

1. A military one, namely, that is measures are involved which were of decisive importance for the outcome of the war i.e. that would at the same time shorten the war,

2. A moral one, namely if the nature of the new measures makes them suitable for incorporation into the new International Law.

The memorandum itself states that this would be possible only within the frame-work of the laws of military combat ethics and a demand is therefore made for rigid adhereence without any exceptions to these ethics of warfare. Under these conditions there can hardly be any doubt as to the possibility of formulating of new international laws.

As expressed by the well known expert on International Law, Frhr. von Freytach-Loringhevens :

"It has always been war which has given its strangest impulses to International Law. Sometimes they have been of positive and sometimes of a negative nature. They

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have led to further development of already existing institutions and norms, to the creation of new forms or the reversion to old ones, and not infrequently also to failures".

Especially in this trial, which itself is supposed to serve the development of International Law, the possibility of such a development cannot be denied.

THE PRESIDENT: We will adjourn.

(A recess was taken.)

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THE PRESIDENT: The Tribunal will not sit in open session after 1 o'clock tomorrow, Wednesday; it will sit in closed session during the afternoon. The Tribunal will not sit in open session on Saturday; it will sit in closed session Saturday morning.

DR. KRANZBUEHLER: Before the recess I was speaking about the possibities of developments of naval law.

The American prosecutor, Justice Robert Jackson, in his report to the President of the United States with regard to this problem, expressed his opinion as follows, and I quote:

"International Law is not capable of development by legislation, for there is no continuously sitting international legislature. Innovations and revisions in International Law are brought about by the action of governments, designed to meet a change in circumstances. It grows, as did the Common law, through decisions reached from time to time in adapting settled principles to new situations."

These words carry a full justification of the clause objected to by the prosecution in the memorandum of the Naval High Command. And that the Allies too deemed war-deciding measures justified, even though they were contradictory to the present views of international law, is proven by the use of the atom-bomb against Japanese cities.

As I am interested in justifying the actual measures taken by the Naval High Command in Germany, I did not consider who of the two Admirals accused carries more or less responsibility for one or for the other measure. As a formal basis, in nearly all cases a Fuehrer-decree exists. Both Admirals, however, stated here, that they consider themselves fully responsible for all orders of the naval war which they gave or which they transmitted. I should like to add to that only two remarks:

As far as political considerations were decisive for orders of the U-boat war, the commander-in-chief of the Navy had no influence on them. The commander of the U-boats was not even notified of these considerations, just as little as of the political settlement of incidents which arose through U-boats.

My second remark concerns the question of to what extent a military commander may be held responsible for the accuracy of legal considerations which he does not make himself, but which are delivered to him by the first experts

of his country who are not just small-town lawyers. For the commander of U-boats, it is to be added that he had only tactical tasks and that his staff contained only a few officers, none of whom had the ability to examine questions of international law of the importance mentioned here. He therefore had to rely on the fact that the orders issued by the Naval War Command were examined as to their legality and were in order. That is probably being handled in a like manner in every navy of the world. A professional seaman is not competent for legal questions; with this reasoning the Tribunal cut off a remark by Admiral Donitz about a legal question. This condition must, however, be considered in applying principles which the German Supreme Court, during the war crimes trials after the first World War, formulated in this way, and I quote:

"The culprit must be conscious of the violation of international law by his doings."

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This appears to me as just, as I should hold it incompatible with the commandments of justice if soldiers would be charged with a criminal responsibility in deciding legal questions, which could not be settled at international conferences and which are hotly disputed in the field of science.

"In this connection I shouldlike to mention that the London Pact of 1930 did not adopt, from the Root-resolution of 1922, the criminal prosecution for violations of the rules of U-boat warfare. The five naval powers participati in this conference apparently came to the conclusion that the problems of naval warfare cannot be solved by means of penal law. And this wisdom applies fully today.

I am now coming to the second basic charge of the prosecution, the one of the intentional killing of the shipwrecked. It is aimed at Admiral Doenitz alone and not at Admiral Raeder.The legal basis for the treatment of the shipwrecked for those ships which are entitled to the protection of the London Protocol of 1936, is laid down in the protocol itself, There it reads that before the sinking, crews and passengers are to be brought to safety. This was adhered to on the German side, and the difference of opinion from the prosecution concerns only the question already dealt with, which ships were entitled to the protection of the protocol and which were not.

In the case of all ships which were not entitled to the protection of the protocol, the sinking is to be considered a military combat action. The legal basis, therefore, for these cases regarding the treatment of the shipwrecked is contained in the Hague Convention concerning the application of the principles of the Geneva Convention for Naval Warfare of 18 October 1907, although it was not ratified by Great Britain.

Accordingly, both belligerents, after each combat action, shall make arrangements for the search for the shipwrecked, as far as military purposes allow this. Accordingly the principle applied to the German U-boats to help the shipwrecked of steamers sunk without warning if by doing so (1) the boat would not be endangered; and (2) the accomplishment of the military mission would not be prejudiced.

These principles are generally acknowledged. In this connection I am referring to the order of the British Admiralty,for example, and I quote: "No British ocean-going merchantman shall aid a ship attacked by a U-boat."

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I further refer to the affidavit of Admiral Rogge according to which in two cases, personally witnessed by him, nothing was done by a British cruiser to rescue the shipwrecked, because U-boats were assumed to be nearby, once correctly so and once erroneously. A self-endangering appears to exist in a higher degree for U-boats in comparison to other types of vessels, because of their special sensitiveness to hits.

Also, in the case of the second exception from the rescue duty, the prejudice to the military mission, the U-boat is subject to special conditions. It has no room to take guests aboard. Its supply of food, water and fuel is limited and each considerable allocation is destructive to its combat-mission. It is further typical for the U-boat that the combat-mission may also call for an unnoticeable attack and therefore exclude the rescue duty.

In order to show here also an opinion about the practice of the opposite side, I quote from the statement of Admiral Nimitz:

"In General US submarines did not rescue enemy survivors if it meant an unusual additional danger for the submarine or if the submarine was prevented from further carrying out its mission."

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In the light of these principles I will briefly consider the measures of rescue by U-boats until autumn 1942. The basic order was issued by the Naval Warfare Command on 4 October 1939 and ordered rescue whenever possible from the military standpoint. This was temporarily limited through the Standing Order for War 154. This order, issued in December 1939 applied to the few submarines which at that time were operating directly below the English coast. It may be seen from the order itself that every paragraph deals with combat in the presence of enemy forces for security purposes. The last paragraph also deals only with this battle-situation and serves the warranted purpose of protecting the submarine-commanders from the dangers to which, under the existing circumstances they exposed their boats through rescue-measures in every case. When after the Norway campaign the activity of the submarines gradually shifted into the open Atlantic, this order became outdated and was cancelled in the fall of 1940. In the time that followed the German submarine commanders enacted rescue measures whenever they could assume such responsibility from the military standpoint. This is known to the Tribunal from numerous special examples cited here which were contained in the statements of submarine commanders submitted here as well as in the war-diaries.

This situation was changed through Admiral Doenitz's order of 17 September 1942 in which he did forbid rescue measures on principle. The decisive sentences are:

"The rescue of members of a sunken ship is not to be attempted. Rescue is contradictory to the most primitive requirements of warfare which are the annihilation of enemy ships and crews."

It has been disputed by the prosecution that this actually prohibits rescue. It looks upon this order as a hidden provocation to kill the shipwrecked, and it has gone through the press of the world as command for murder. If any accusation at all has been refuted in this trial, then it seems to be this contemptible interpretation of the order mentioned above.

How was this order brought on? Beginning with June 1942 the losses of German submarines through the allied air-force rose by leaps and jumped from monthly average of 4-5 up to 10, 11, 13, during the first half-year of 1942 up to finally 38 boats in May 1943.

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Orders and measures were chasing each other from the Command of submarine warfare in order to counter these losses. They availed nothing and every day brought fresh reports of air-attacks and losses of submarines.

This was the situation when on 13 September it was reported that the heavily armed British troop-transport "Laconia" with 1500 Italian prisoners of war and an allied crew of 1,000 men and some women and children aboard had been torpedoed. Admiral Doenitz withdrew several submarines from current operations for the purpose of rescuing the shipwrecked and thereby no difference was made between Italians and Allies. From the very start the danger of enemy air attacks filled him with anxiety. While the submarines during the following days devotedly rescued, towed boats, supplied food etc. they received no less than 3 admonitions from their commander to be careful, to divide up the shipwrecked and at all times to be ready to submerge. These warnings were of no avail. On 16 September one of the submarines with a red cross flag laid out, was attacked and considerably damaged by an allied bomber while towing life-boats, one of which was hit and caused losses among the shipwrecked. Following this report the commander sent 3 more radio messages with the order in case of danger to submerge immediately and under no circumstances to risk their own safety. Again without avail. In the evening of this day, 17 September 1942 the second submarine reported that during its rescue action it had been taken unawares and was bombed by an airplane.

Notwithstanding these experiences and in spite of the explicit order from Fuehrer-Headquarters to risk no boats under any consideration, Admiral Doenitz did not stop the rescue-action but had it continued until the shipwrecked were taken on by a French warship sent to their rescue.

But this incident was a lesson. Due to the enemy air-scout activity over the entire sea-area, it simply was no longer possible to carry out rescue-measures without risking the submarine. It was useless to again and again give orders to the commanders to do rescue work only if their own boat was not endangered thereby.

Earlier experiences had already shown that, for their human desire to render aid had led many commanders to underestimate the dangers from the air.

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But it takes a submarine, with the deck clear, at least one minute to submerge on alarm while an airplane can cover 6,00 meters in that time. This means practically that a submarine engaged in rescue-action when sighting a plane has not time enough to submerge.

These were the reasons which caused Admiral Doenitz directly after the close of the "Laconia" incident to forbid rescue-measures on principle. The formulation was motivated by the endeavour to preclude the commander's discretion and to suppress every thought of estimating the danger of air-attack in the individual case and then according to the occasion still do rescue-work.

It is difficult to judge the actual effects of this order. From 1943 on about 80% of the boats were fighting against convoys where even without this order rescue-measures would have been impossible.

Whether or not one or the other of the commanders would have, without this order, risked it once more to concern himself with the life-boats, nobody can tell with certainty. As is known there was the order since the middle of 1942 if possible to bring in as prisoners captains and leading engineers. During the almost 3 years of war which followed this order was carried out not even a dozen times which proves how high the commanders themselves estimated danger to their boats in rising to the surface.

On the other hand, nothing was more distressing for the crew of the torpedoed ships then to be taken aboard a U-boat, because they knew exactly that their chance of being rescued was much better in a lifeboat than on a U-boat which, with a probability of 50 and more percent, would not return to its base. I therefore together with Admiral Godt arrived at the conclusion that the Laconia order may have cost the lives of some Allied seamen at the same time as it may have saved the lives of others. As this may be, in the face of the enormous losses through the enemy air force the order forbidding rescue was justified. It corresponded completely with the basic idea of the precedence of the own vessel and of the own task, as prevailing in all navies; a principle which I believe I have proven as commonly valid in view of existing British and American orders and practices.

How then does the prosecution arrive at the conception of seeing in this order an "order to murder"? Its origin is the discussion between Hitler and

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the Japanese Ambassador Oshima in January 1942 in which Hitler proposed an order to his U-boats to kill the survivors of sunk ships. This announcement as the prosecution infers, Hitler doubtless made good, and Admiral Doenitz had been carrying it out by the Laconia order.

Actually on the occasion of a lecture on U-boat problems which both Admirals had to give in May 1942, the Fuehrer suggested proceeding actively against the shipwrecked, in the future, that is, to shoot them. Admiral Doenitz immediately rejected this sort of action as thoroughly impossible and Grand Admiral Raeder unqualifiedly concurred with him. Both admirals specified the improvement of the torpedos as the only permissible course of raising the losses among the crews. In the face of the opposition of both admirals, Adolf Hitler dropped his proposal and following this lecture there, no order whatever was given concerning shipwrecked, let alone concerning the killing of the shipwrecked by shooting.

The destruction of the crews through improved action of the torpedos is an idea which for the first time appeared in this discussion of May 1942 and which returns in later documents of the naval warfare command. I am therefore to express myself about the legality of such a tendency. According to classical international law the destruction of combatants was a legal goal of war actions but not of non-combatants. In view of the development of the last wars one may be doubtful whether this classical theory still has any validity. I am regarding the hunger blockade as the first important infringement upon this theory, which, by cutting all food supply, was aimed at the civilian population, therefore the non-combatants of a country, the victims of which during the world war were estimated at 700,000 people.

Although this blockade was frequently acknowledged as inadmissible according to international law, it was practiced however, and therefore it means breaking with the principle of protection for non-combatants from war measures.

The second great change was brought on by the air war. I do not wish to discuss in detail the unsolvable question of who had started, but only state fact that the air war, at least in the last two years, was aimed against the civilian population. If in dozens of attacks on residential quarters of Ger-

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cities after an attack thousands or tens of thousands of civilians were among the victims and only a few dozens or a few hundreds of soldiers, then nobody can assert that the civilian population was not the goal of the attack. The mass dropping of explosives and fire bombs on entire areas does not tolerate a doubt and the use of the atom bomb has produced the final evidence thereto.

In view of the hundreds of thousands of women and children who, in this manner, miserably died in their houses, were buried, suffocated or burnt to death, I am surprised at the indignation of the Prosecution about the loss of about 30,000 men who lost their lives on the battle field or on ships which were armed and carried war material and often enough bombs which were destined for the attack on German cities. Moreover, most of these men died in combat, that is by mines, aircraft and especially in attacks on convoys, actions which also according to British conception were lawful.

The German Naval Warfare Command regarded these men as combatants. The British Admiralty takes the opposite standpoint in the orders for the merchant navy, although Oppenheim, the well known British expert of international law, even before the outbreak of the first world war, defended the thesis that the crew is to be treated the same as combatants. He points to the century old and especially in England upheld practice to take the crew of merchant ship prisoners of war. He finds this principle confirmed in the 11th Hague convention of 1907 and recognizes the crew of the merchant navy as potential members of the navy. The legal position in their defense against a war ship is described as "entirely analogical to the position of the population of an unoccupied territory who takes up arms in order to combat invading troops."

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It is wellknown that this unit is a combat one, according to para.2 of the Hague Convention on land warfare, and without considering whether the individual actually makes use or not of his weapon. Accordingly, Oppenheim refuses to make any distinction, among members of occupying forces, between persons who are enrolled in the enemy navy and those who are not.

If this interpretation was already valid before the first world war, it certainly was unassailable in the year 1942, at a time when there were no more unarmed enemy ships and when the neutrals who happened to enter at all the zone of operations were moving in enemy convoys exclusively, which made them, just like enemy ships, solid members of the military system of the enemy forces. They all had lost any peaceful character and were considered as guilty of active resistance. Active resistance against acts of war is not permitted to any non-combatant in land warfare and results in his being punished as a partisan. And should in the war on sea, a ship's crew be entitled to the combatant's privileges, without suffering any of its disadvantages? Should this crew be permitted to participate in all possible acts of war, even in the firing of guns and underwater bombs, and yet remain non-combatant? Such an interpretation renders illusory the entire concept of a non-combatant. It cannot make any difference, whether or not only a part of the crew has anything to do with the serving of the guns. The ships as an entirety represents a fighting unit and on board a commercial ship more people had actually something to do with the serving of weapons as on board a submarine.

These men were trained under military supervision, they served the guns along with gunners of the Navy and the use of their weapons was regulated according to the admiralty's orders. The crews of ships were accordingly combatants and thus it was a legitimate aim of hostilities to destroy them by the use of arms.

This explains at the same time the sentence about the destruction of ships and crews, which is considered by the prosecution as a particular sign that the "laconia" order bore the character of a murder-order. There has been enough discussion concerning the meaning of this sentence as an argument for the prohibition of saving. It may, taken out of its context, give cause for

misunderstanding. But whoever tries to read the entire order, cannot misunderstand it. It appears to me as decisive that in accordance with its origin, it was never meant to be a murder-order and has not been interpreted as such by the commanders. This is proven by the declarations and statements of dozens of submarine commanders. In its context, it could not even have been interpreted as a murder-order. In fact, in the next paragraphs it was explicitly ruled that as far as possible certain members of the crew should be brought back as prisoners.

It stands to reason that one must trust a military command with enough cleverness not to conserve, if it gives such a murder-order at all, a few witnesses of its crime.

Contrary to the Prosecution, the British Admiralty clearly has not believed in such a murder-order. Otherwise it would not have given orders to its captains and leading engineers to escape capture by German submarines, by camouflaging as plain sailors while in the life-boats. According to the interpretation by the Prosecution, such an order would indeed have meant that the captain would have been shot by the submarine along with all the other members of the crew.

Further on, the Prosecution has quoted the order to attack so-called "rescue-ships" as an evidence of the intention to kill shipwrecked people. However, only the individual who is either in the water or in the life-boat is shipwrecked. A shipwrecked combatant who is again on board a ship is nothing but a combatant and accordingly the legitimate aim of an attack. I have already pointed out, during the hearing of evidence, the shooting-down of German sea rescue planes with intent to kill the rescued airmen, in order to show that the enemy command acted according to the very same interpretation.

I shall enter as shortly as possible into particulars of the deposition of witnesses, on which the Prosecution tries to base its interpretation of the "Laconia" order. In my opinion, the deposition of the first naval lieutenant Heisig, as made here before the Tribunal, is irrelevant. His former affidavit is wrong and we know why, from the witness Wagner. Here, before the Tribunal, Heisig has explicitly denied that in Grand-Admiral Doenitz address to the cadets of the submarine school in September 1942 there has been any question that shipwrecked people should be shot at. Rather he has

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personally drawn a conclusion out of the words that totalitarian war must be waged against ship and crew, and by the reference to bombing war. His interpretation may be explained by the fresh impression of the bombing of Luebeck, wh' he had just experienced. The other listeners did not share this interpretation. In fact, they did not even think of it. This is evident according to the deposition of 3 persons who have heard the address. The further assertion of Heissig, that an officer unknown to him had taught him, on an unknown occasion, that one should order the men below deck, when exterminating shipwrecked people, I consider as an improvisation of his phantasy, which appears to be easily excited. If such had really been the case, then such astonishing an occurrence, which would have been in contradiction with all educational principlesof the navy, would have made such an impression on a young officer, that he would have conserved some recollection of the full circumstances of such an instruction.

The testimony of Korvetten Kapitaen Moehl must be taken much more seriously. Because he had - there is no doubt about it - at least hinted to a few submarine commanders that the "Laconia" order demands or at least approves of the killing of shipwrecked. Moehle received this interpretation neither from Admiral Doenitz himself, nor from the chief of staff, nor from the first assistant, Commander Hessler, that means from none of the officers who alone would have been authorized to transmit such an interpretation to the chief of a flotilla. How Moehle actually arrived at this interpretation has not found any explanation by the trial in my opinion. He maintains: by the fact that Korvettenkapitaen (Lt. Com.) Kuppisch from the staff of the BdU (Commander of the Submarines) had told him the story of "U 386" a boat, the Commander of which had been reprimanded for not having shot Allied airmen drifting in a rubber boat. This explanation of Moehle cannot be correct. It is proven beyond any doubt by the war diary and by witnesses that the commander of "U 386" had been reprimanded because he did not take on board the airmen concerned and brought them back. The whole affair with "U 386", furthermore, took place a year after the Laconia incident in September 1943 and Lt. Cmdr. Kuppisch who was supposed to have told it had already been killed in action as U-Boat commander in August 1943.

It is my task to discuss how Moehle actually come to give his instruction about the "Laconia" order.

One thing at any rate has been proven, Admiral Doenitz and his staff had not caused this briefing to be given nor did they know anything about it. Considering the frequent personal contacts between the U-Boat commanders and the staff of the Commander of the U-Boats this can only be explained by the fact that the few commanders who Moehle thus briefed did not take his words seriously.

Is Admiral Doenitz now responsible for this interpretation of the Laconia order, given by Moehle? Criminal responsibility presupposes in the first place some kind of guilt, i.e. the possibility to foresee the result. Considering the close contact with his flotilla chiefs and commanders, for whom alone the Laconia order was intended, Admiral Doenitz could not foresee that a flotilla chief could give such an interpretation to that order without making any attempt for clearing it up with the commander of the U-Boats. Such a conduct is beyond anything that could reasonably be expected. Therefore, any guilt is excluded. Criminal responsibility requires another criterion, namely results must be proved.

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This also is entirely lacking. The prosecution has not even made a serious attempt to prove that one of the commanders, briefed by Moehle in that direction, actually shot once at shipwrecked.

As far as we are informed such a case happened only once in this war, in the case of Kapitaen-Leutnant (Lt. Sen. Grade) E c k. It is significant that this case was not presented by the prosecution but by the defense.

The conduct of Eck has nothing whatsoever to do with the Laconia order as the prosecution wants it understood. He was not concerned with the destruction of human lives but with the removal of wreckage and floats from which the Allied airplanes could deduce the presence of a German U'boat in this area. For this conduct two of his officers together with him have been condemned to death and hereby punished with a severity which will not be understood any more in normal times.

The two cases, presented by the prosecution, in which shipwrecked allegedly has been shot at are so obviously unsuitable for proofing this accusation that I need not deal with it any further. The testimony about the sinking of the "Noreen Mary" bears the stamp of phantasy in various points and, in the case of the attack on the "Antonico", the intention to destroy shipwrecked is out of question because all was over in 20 minutes and the night was dark.

I was in the fortunate position to present to the Tribunal a compilation of the Naval Warfare Command concerning a dozen cases in which Allied forces had allegedly shot at German shipwrecked. It appears to me that every one of these instances is better than that of the prosecution and some appear rather convincing. I value therefore all the more the sober attitude taken up by the Naval War Command of these cases when giving their opinion on these cases to the Fuehrer's Headquarters.

It namely points out that:

1. Part of the incidents occurred during combat operations.

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2. shipwrecked, swimming in the water, might easily believe that a miss on other targets is aimed at them.

3. so far no written or verbal order by an command for the use of arms against shipwrecked had been traced.

I can only request that these principles are applied also to the incidents presented by the prosecution.

In the same written opinion to the Fuehrer's Headquarters the Naval Warfare Command rejects reprisals by destroying enemy shipwrecked; that was on 14 September 1942, three days before the "Laconia order". As the latter came to the knowledge of the Naval Warfare Command as a wireless order, it would doubtlessly have been cancelled in accordance with the opposite view point just expressed to Fuehrer's Headquarters if it had been understood as an order for the shooting of ship-wrecked.

And now I am coming to the positive counter evidence against the opinion of the prosecution. It consists in the first place of the number of the rescued allied sailors. It amounted, according to a survey of the British Minister of Transport in 1943, to 87% of the crews. Such a result is simply not compatible with an order for destruction.

Further on, it has been established that Grand Admiral Doenitz in 1943, that is after the Laconia order, rejected allconsiderations of actions against shipwrecked.

In a written opinion given to the Foreign Office on 4 April 1943, a directive to the U-boats to take action against life boats or shipwrecked was considered unbearable by the Naval Warfare Command, as it was against the innermost feeling of every sailor.

In June 1943 the Grand Admiral, when receiving reports from Lieutenant Command Witt about British aviators shooting at the shipwrecked of submarines, most decidedly rejects the idea to attack the foe who has become defenseless in combat as it was incompatible with our principles of waffare.

Summing up, I am convinced that the assertion of the prosecution that German submarines had received an order to murder the shipwrecked has been strikingly disproved. The Grand Admiral Doenitz stated here that he had never allowed the spirit of his submarine men to be endangered by mean acts. With losses from 70 to 80 %, he could only replenish his troops with volunteers if he kept the fight clean, in spite of its being tough. And if the Tribunal

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remembers the declaration of the 67 commanders in British captivity, it will have to admit that he created a bearing and a spirit which survived defeat.

I have endeavoured to present to the Tribunal the most important facts and several legal considerations regarding naval warfare, in order to clarify the most important problems discussed here from the point of view of the defense.

The problem concerns the examination of the behaviour of admirals in naval warfare, and the question of what is permissible according to international law is most closely connected with what is necessary according to the military standpoint. I, therefore, in examining this point of the indictment, deeply regret that the Charter of this Tribunal deprives the accused offices of a privilege guaranteed them by the Geneva Convention, i.e., the passing of judgment by a military tribunal making use of the laws and regulations applicable to its own officers. According to Article 3 of the Charter, I am not allowed to question the competency of this tribunal. I can therefore only request the Tribunal to make up for the unfairness that I see in the above mentioned article of the Charter by applying the same standards, where military evaluation and moral justification of actions of these German Admirals is concerned, as the Tribunal would apply to Admirals of their own countries. A soldier, due to his practical knowledge of procedure in warfare not only on the part of his own country but also of the adversary, is keenly perceptive of the dividing line between combat and war crimes. He knows that the interpretation of international law concerning what is allowed or forbidden in naval warfare is decisively governed by the interests of his country. An insular power like Great Britain, having long and sensitive sea lanes and a strong surface fleet, has always looked at these questions from a different angle than the continental powers. The The attitude of the United States, from the renunciation of submarine warfare by the Root-resolution of 1922 to the unrestricted submarine warfare against Japan in 1941, reveals how a change in strategic position entails also a change in legal evaluation. No one can know to what degree the development of airforces and the efficacy of bombs will increasingly force navies under water and render obsolete all previous conceptions of submarine warfare.

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For a naval-officer these are obvious reflections, and they should prevent a man of law from settling controversial questions of law and policy pertaining to naval war at the expense of those whose professional duty it is to direct navies.

In the first world war German submarine war was accompanied by a storm of indignation. It seems significant to me that the English historian Bell judges in these very days, in a paper intended only for official use of the Foreign Office, the right to such indignation, as follows:

> "It is an old rule of military honornever to belittle the deeds of an enemy who has put up a stiff and brave fight. If this rule had been followed in England, the public would better appreciate the place which the war between submarines and commerce will occupy inthe history of strategy and of war. It is unfortunate that the cries of terror as well as the unseemly insults of journalists were repeated by responsible people, with the result that the slogans piracy and murder entered the vocabulary and have engendered the corresponding feelings in the hearts of the people".

I now am to treat further the otherpoints of the indictment against Grand Admiral Doenitz which are not concerned with naval war. To begin with there is the charge of preparation of aggressive wars. It is known how much this very accusation is being contradicted by the professional officers of probably all allied countries. In answer to such attacks in public, Justice Jackson formulated for the press (4th December 1945 Stars and Stripes, European Ed., 5 December 1945,) the ideas of the prosecution regarding this subject, as follows:

> "I have made it clear that we do not prosecute these militarists because they served their country, but because they dominated it and lead it into war. Not because they conducted the war, but because they have been driving to war."

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If this standard is used to weight the charge, then for the defense of Grand Admiral Doenitz against the charge of preparing aggressive wars I need only point to the result of the evidence. At the beginning of the war he was a relatively young commander; his only task was the training and instruction of submarine crews; he did not belong to the General Staff in the meaning of the indictment and did not participate in any of the addresses which were presented here as proof of war intentions. The charge that he had advocated the occupation of submarine bases in Norway is likewise disproved.

The same applies to the allegation that in 1943 he had proposed an attack upon Spain in order to capture Gibraltar. The conquest of Gibraltar against the will of Spain was absolutely impossible and out of the question during the entire war, and especially so in 1943.

For Germany the war had reached the stage of defense, yes, even of dangerous setbacks on all fronts, at the time when Admiral Doenitz was appointed Supreme Commander of the Navy on 1 February 1943. This fact may be significant for the participation in the so-called conspiracy. The prosecution is not very clear about the precise moment at which they want to fix the beginning of the responsibility of participation. In the indictment of individuals, intimate connection with Hitler since 1932 is mentioned. This, however, is obviously an error. Admiral Doenitz became acquainted with Hitler only in the fall of 1943, on the occasion of submitting a military report, and in the following years talked to him briefly, and always only about military problems, altogether 8 times and never alone. Since, aside from this fact, the defendant never belonged to any organization which is accused of conspiracy by the prosecution, I see no connection of any kind to this conspiracy prior to 1 February 1943.

More important is the question of retroaction for joining the conspiracy, as has been illustrated by the British prosecutor by the example of the railroad assassins. This idea of guilt, retroactive on past events, is very difficult, to absorb for the German Jurist. The continental concept of law is reflected by the formulation of Hugo Grotius:

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"To participate in a crime a person must not only have knowledge of it but also the opportunity to prevent it."

Considering that the entire legal concept of the conspiracy represents a special creation of Anglo-Saxon justice in our eyes, then this applies even more to the retroaction of the so-called conspiracy. A judgment laying claim to international validity, one which should be understood by the peoples of Europe and especially by the Germans, must be based upon generally recognized principles of law. This, however, is not the case regarding a retroactive guilt.

To what extent such a legal construction may seem purposeful in combatting certain typical crimes, it seems to me entirely inapplicable to the review of events such as are being discussed here.

Admiral Doenitz became the Supreme Commander of the Navy in the course of a normal military career, entirely free of politics. The appointment was based upon the proposal of his predecessor, GrandAdmiral Raeder, for whom the proven abilities in the direction of U-boat warfare alone were decisive. An acceptance of the appointment was required just as little as on the occasion of the appointment to any other military position. Admiral Doenitz entertained only the thought, as any officer might well have done in a similar position, that is, the question of whether he would be equal to the task and whether he could accomplish it in the best interest of the navy and of the people. All other considerations, which the prosecution apparently expected of him during this period, namely, the legitimacy of the Party program and of the policy of the Party from 1922 on, as well as of the German internal and foreign policy since 1933, can be but fictions; they have nothing to do with the facts. Fictions of such nature are not limited by time nor by reality. Is the responsibility for past measures on taking over a high position to extend only to acts of the present cabinet or is it to extend to acts of former cabinets, and up to what period? Is it to include one's Allies? Such considerations are logical and cannot be refuted; however, they lead to unacceptable results and show the impracticability of the idea of retroaction regarding the so-called

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conspiracy.

To measure by exact standards the participation in such a conspiracy is difficult enough, if events not of a criminal but of a military and political nature are involved. Of what meaning are such concepts as "voluntary accession" and "knowledge of the common plan" when in times of the greatest danger an officer assumes the task to prevent the collapse of the sea-warfare?

Even the prosecution seems to realize this. For, corresponding to their general idea, they attempt to link Admiral Doenitz with the conspiracy in a political way. This is accomplished by the assertion that he became a member of the Reich-Cabinet by virtue of his appointment to the Supreme-Command of the Navy.

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This allegation is based upon the decree whereby the Commanders in Chief of the Army and of the Navy were invested with the rank of Reich Minister and upon the order of Hitler were to participate in the Cabinet meetings.

It is evident that one is not actually a Reich Minister merely by being invested with the rank of Reich Minister. Also he is not a member of the Cabinet, if one is only permitted to participate in it upon special orders. This implies exactly, that he was only to be consulted on professional problems, but never had the authority to gather information about other departments. One cannot, however, speak of a political task and consequently of a political responsibility without the existence of such an authority. For an activity as a Minister, any legal basis is lacking. According to the German compulsory service law there existed for the entire Wehrmacht but one minister, the Reich War Minister. This position remained unoccupied after the resignation of General Field Marshal von Blomberg. The business of the Ministry was conducted by the Chief of the High Command of the Wehrmacht. A new Ministry was not created, neither for the Army nor for the Navy. The Commanders in Chief of the Army and of the Navy therefore would have had to be Ministers without portfolio. Since however they headed a department, namely the Army and the Navy, such an appointment would have constituted a contradiction to all usages of the state law. The task to countersign such laws, in which the minister participates within his jurisdiction, is to be considered as the basic symbol of all ministerial activity.

There is not a single law which has been countersigned by the Supreme Commander of the Navy. I have shown this to the Tribunal by the example of the Prize laws. That is to say, that even by and rather because of taking into consideration of the legal standards of a democratic system, the Supreme Commander of the Navy cannot be designated as a member of the Reich Cabinet, because he lacked all authority of participation in legislative acts and every collective responsibility for policies assumed. His task was and remained a military one even though, for reasons of etiquette, he was put on an equal basis in rank with other Reichministers.

The Prosecution themselves realized that a Reich Government in the constitutional sense no longer existed during the war and consequently stated

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that the actual governing was carried out by those who participated in the discussions of the situation in the Fuehrer Headquarters.

As all witnesses examined here stated, it was dealt here with events of a purely military nature, where incoming reports were presented, military measures discussed and military orders issued. Questions of foreign policy were mentioned exceptionally only if they had any connection with military problems; they were, however, never discussed and no decision was rendered on them in these Fuehrer conferences on the situation. Internal policy and the security system was not on the plan for discussion at all. Insofar as non-soldiers participated, they were attendants, listeners, who gathered information for their respective departments. The SS Reichsfuehrer or his deputy were present for the Command of Waffen SS and during the last year of war also for the reserve Army.

The Grand Admiral always participated in these Fuehrer Conferences when he was at the Fuehrer's Headquarters. Notes, taken down by whoever accompanied him on all these meetings and discussions of the Supreme Commander are all in possession of the Prosecution. As the Prosecution has not presented a single one of these notes, from which it would appear that the Supreme Commander participated in reporting on or in discussions of affairs of political nature, one can assume that such notes do not exist. Thus the testimony of witnesses has been confirmed, according to which the Fuehrer Conferences had nothing to do whatever with governing in a political sense, but were an instrument of purely military leadership.

Therefore an overall responsibility of the Grand Admiral for all events that happened and occurred since 1943, and which in the course of this trial have been denoted as criminal, does not exist. Consequently I shall deal with these individual allegations only by which the prosecution tries to directly connect Admiral Doenitz with the conspiracy. To proceed in that manner I believe I am the more justified, as a short time ago the Tribunal denied me the right of cross examination of witnesses in the Katyn case with the argument that no one was accusing Admiral Doenitz in connection with the Katyn case. I conclude, therefore, that at any rate in the eyes of the Tribunal, he is accused of such cases only wherein he allegedly directly participated.

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To begin with, this applies to the Fuehrer's order for the exterminati of sabotage commandos dated 18 October 1942. The Prosecution has tried to establish that this order had been expounded to Admiral Doenitz in detail, together with all possible objections, shortly after his assumption of the position of commander-in-chief of the navy. It has failed to establish such a claim. In fact, Doenitz as he himself admits did read or had explained to him the order in question, in fall 1942, in his capacity of commander of submarines, and in the same form in which the front commanders received it.

I do not wish to speak here of the circumstances which led to objections against this order on the part of the OKW. Indeed, not all these circumstances could be discernible to one who received this order at the front. For such a man it was a matter of reprisal against saboteurs who were only externally soldiers but did not fight according to the regulations which are binding on soldiers. Whether such reprisals were admissible at all according to the Geneva Convention, and to what extent, was not capable of being judged, nor did it fall within the competence of the recipient of the order. Any superior officer, at any rate, has probably recognized that the order not to grant any pardon and to deliver such persons, in certain cases, to the SD, was in itself an offense against the rules of war. However, as the essence of any reprisal is to avenge a wrong on the part of the enemy with wrong on one's own part, such recognition does not prove anything concerning the legitimacy or illegitimacy of the reprisal order. If no one but the government of the state is competent to order reprisals, then hundreds or thousands of German officers cannot be required today to consider themselves especially competent, and to presume to verify orders whose actual and legal bases were entirely unknown to them. In this case the principle prevails, at least for the front commander, that the subordinate may, when in doubt, rely on the order as given.

Now, the Prosecution seems to be of the opinion that Admiral Doenitz a few months later, when he had become commander in chief of the Navy, had the opportunity and also the obligation to inform himself as the basis of the order issued by the command. This requirement fails to recognize the duties of a commander-in-chief of the Navy. He has to wage naval war. The whole German naval war, especially the submarine war, was in the spring of 1943, owing to huge losses inflicted by the enemy air force, on the verge of collapse.

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These were the worries with which the new commander-in-chief had to cope in addition to an abundance of new problems concerning the navy which were coming up. How can one require such a man, as in the quietest of times, to cope with an order of remote date, which had nothing whatever to do with naval warfare. On the contrary, a special paragraph explicitly excluded prisoners taken during naval operations.

I must insert something concerning the circumstances of giving command. The naval units were under the control of the naval command only in those matters which belonged to the duties of the Navy, i.e. naval warfare and artillery coast defense.

Concerning so-called territorial questions they were not subordinate to the Naval Warfare Command to the Wehrmacht commander of the theater of war in which their basis was established. Orders concerning such measures of war on land were given without any collaboration on the part of the Naval Warfare Command and their execution was not reported to it. Just as hardly anyone can think seriously of holding a general responsible for the German submarine war, just so little in my opinion does it seem justified to hold an Admiral responsible for orders given in land warfare.

Mr. President, I have come to the end of a paragraph.

THE PRESIDENT: Certainly. We will break off.

(A recess was taken until 1400 hours)

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AFTERNOON SESSION

(The hearing reconvened at 1400 hours,)

16 July 1946

DR. KRANZBUEHLER: Before the noon recess I was discussing the fact that units of the Navy were not directly subordinate to SKL in matters of naval warfare.

Such a routine for territorial duties also explains the complete ingorance of the Admiral of the fleet and of his colleagues in the naval warfare command, about the delivery to the Security Service of the crew of the Norwegian torpedo boat MTB 345 after their capture by units of Admiral von Schrader. As demonstrated by the depositions of the witnesses and the records of the Oslo war crimes Court, the naval warfare command received only a combat report concerning the capture of the vessel and the number of prisoners. Any further details, the discovery on board of material for sabotage and of civilian suits, the finding of sabotage orders and the treatment of the crew as saboteurs according to the order given by the command, were dealt with as a territorial matter between Admiral v. Schrader and the Wehrmacht Commanding Officer for Norway. The decision concerning the fate of the crew came from the Fuehrer headquarters in reply to a question of Gauleiter Terboven. Not only there is no evidence that the naval warfare command took part in these territorial questions, but this must be considered as refuted according to the evidence submitted and of the chain of command which has been demonstrated.

I consider as the second attempt of the Prosecution to establish a participation in the so-called conspiracy for committing war crimes, the submitting of Admiral Wagner's record concerning the good treatment of prisoners of war clearly influenced the units fighting on the Western front, and that many cases of going over to the enemy were being reported. He ordered an examination of the question of a withdrawal from the Geneva Convention.

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Thus he wanted to convince his own soldiers that they could no rely upon good treatment as prisoners of war, and to create accordingly a reaction against the enemy propaganda. Two days later Hitler reverted to this idea, but now another reason was put into the foreground . He defined the enemy warfare in the East and the bomb attacks on the German civilian population as a downright renunciation of international law by the enemy , and desired, on his side, to free himself from any obligations by withdrawing from the Geneva convention. Once more, he wanted the Wehrmacht's opinion and addressed himself directly to the Grand-Admiral. The latter did not answer. The point of view of the military leaders on this matter was unanimously in the negative.

On the next day, and preceding the discussion of the situation, a ten minute's conversation took place between Grand-Admiral Doenitz, Colonel-General Jodl and Ambassador Hewel; in the course of this conversation Doenitz expressed his negative attitude. According to the notes of Admiral Wagner he said that

"it would be better to take the measures considered to be necessary without previous announcement and to save at any rate one's face before the world ".

The Prosecution perceives herein the readiness and the design to expose hundreds of thousands of Allied prisoners of war to arbitrary murder.

Admiral Doenitz himself does not remember any such sentence This is not surprising, as there is no question of a record, but a condensation of a long conversation into 4 sentences. The precise wording was done the day after the conversation only by Admiral Wagner. The latter declares himself that the Grand-Admiral had disapproved of any "wild measures" which were apt to put us in the wrong from the beginning and had considered as permissible only such measures which, according to the enemy's attitude, were actually justified and imperative in each case. As Wagner the author of the transcript, should himself know best what he meant with this, I personnally cannot add anything to this decla-

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ration. The interpretation of the Prosecution is not supported by any other circumstances. There was no question at all of keeping any measures secret. They would have to be made known, no matter whether they were meant to deter our own deserters or to make reprisals.

Wagner's note does not mention anything about any kind of concrete measures to be taken, and all witnesses that were present at this discussion on the situation in Hitler's headquarter state that not a word was spoken about that subject. The idea to kill prisoners of war could therefore, not possibly occur to any of the participants in the discussion, noted down by Wagner.

Now it has come to light, by the statements of the defend Ribbentrop and Fritzsche, that Hitler besides the action concerning the generals evidently had prepared another one in which only Goebbels and Himmler were to participate and which by chance came to Ribbentrop's knowledge. In this action the shooting of thousands of prisoners of war seems to have been taken into consideration as a reprisal against the air attack on Dresden. Hitler, very wisely, did not utter a murmur indicating such idea to the generals. This action was not taken up any further and reprisals were not executed.

Herewith I come back to facts. It is a fact that Admiral Doenitz disapproved of the leaving the Geneva-Convention and that Hitler, owing to the attitude of all military leaders, who clearly opposed it, did not follow up the idea any more. It is a fact that no measures violating international law, were taken by the German as a result of the remark criticized by the Prosecution and it is lastly a fact, that the enemy-sailors who were made prisoners were grouped in a prisoner of war camp of the navy and that they were treated in an exemplary way to the last day of the war.

Who in his own department behaved as Doenitz did with rega to prisoners of war of the navy, may reasonably not be charged with having thrown over board all standards of law and morals wi regard to prisoners of war.

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As certified by an English Commander : when the prisoner of war camp of the navy was taken over by British troops all prisoners without exception said that they had been treated with fairness and consideration. The Tribunal will, no doubt, appreciate such unanimous statements after what in these proceedings otherwise has been heard of failures in the treatment of prisoners of war not only on the German side.

If I now occupy myself with the conspiracy to commit crime against humanity, I should like to draw your attention to the fact, that Admiral Doenitz is not accused by Article 4 for directly having committed crimes against humanity. In the individual accusation not even participation in the conspiracy to commit crimes against humanity was contended. That I would say, is the admission that there is in fact no relation between his activity and the crimes against humanity spoken of by the Prosecution. Nevertheless the Prosecution has presented some documents which apparently should prove a participation in the responsibility for certain crimes against humanity.

In judging these documents the most important question is again and again :"What did Admiral Doenitz know of these crimes?

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To this subject I should like to clear up one point. During the entire war he lived at his staff-headquarters, first on North-Sea coast, since 1940 in France, and in 1943 for a short time in Berlin and then in the camp "Koralle" near Berlin. When he was at the Fuehrer headquarters he lived with the navy staff there. Off duty he associated almost exclusively with naval officers. This may have been a weakness, but it is a fact, which explains the lack of knowledge about certain occurrences.

The fact that the defendant forwarded a proposition of the Ministry for Armaments to employ 12,000 men from concentration camps as workers in the shipyards proves for the Prosecution that Admiral Doenitz knew and approved of the arrest of countless innocent people and their ill-treatment and killing in concentration camps.

He actually knew, of course, that concentration camps existed and he also knewthat, besides the professional criminals,people arrested for political crimes were kept there. As already explained here, the keeping in custody of political adversaries, for reasons of safety, is a mode of acting, executed by all States in times of danger. Knowledge of such an institution can therefore incriminate no one. However, an unusually high number -- out of proportion with the number of the population -- of political arrestees may stamp a regime as a regime of terror. Taking into account a population of 80 million and the 5th year of a grim war, even twice or three times the number of 12,000 men mentioned by Admiral Doenitz would not yet be the sign of a regime of terror. This is a point that the Prosecution will hardly want to stress.

He has stated here as a witness that the Commander-in-Chief of the navy as well as his collaborators and the overwhelming part of the German people did not know of the abuses and killings that occurred in concentration camps. All that the Prosecution has put forward against this are assumptions but no proofs.

I will, therefore, to this point only refer to the statement of the then Minister for Armaments, Speer, according to which the inmates of concentration camps were much better off than in camp than when they worked in industry and that these jobs were much desired. The proposition forwarded therefore did not signify anything inhuman but on the contrary, rather the opposite.

In the same proposition there is a suggestion to take energetic measures against sabotage in Norwegian and Danish shipyards where 7 out of 8

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new constructions had been the victims. If need be, the personnel should be entirely or in part replaced by "CC-workers." Because, so it says, a sabotage of such dimensions can only be possible if all the workers silently condone it. We have here a proposition for security measures in which workers who actively or passively participated in sabotage are kept in a camp close to the shipyard whereby their connection to sabotage agents was to be cut off. I do not believe that juridical objections can be raised against such measures of security.

According to the practice of all occupation troops even collective punishment measures would be justified in such cases.

Actually the proposed measures were never carried out and the Prosecution very likely presents them only for the purpose of bringing against Admiral Doenitz a general accusation of a brutal attitude towards the inhabitants of occupied territories. For this purpose it even refers to a statement of the Fuehrer at a conference on the military situation in the summer 1944, according to which, terror in Denmark must be fought with terror. The only part Admiral Doenitz had in this statement was that he heard it and that his companion, Admiral Wagner, wrote it down. The Navy had no part in it, nor did it take any measures as result of it.

In contrast to this line of evidence submitted by the Prosecution, I should like to emphasize the attitude which Admiral Doenitz actually showed towards the population of the occupied territories. There is before the Tribunal a survey concerning the administration of justice by the Naval Court for the protection of the inhabitants of the occupied territories against excesses of members of the Navy. The survey is based on an examination of about 2,000 delicts and part of the judgments rendered are given together with circumstances and reason. Judging from that one can fairly say that the Naval Courts protected the inhabitants in the West as well as in the East, protected them with justice and strictness, that is to say, lives as well as property and the honor of their women.

This meting out of justice was constantly supervised by the Commander-in-Chief of the Navy as the highest legal authority. According to court regulations he was competent for the confirmation of death penalties meted out to German soldiers.

The shortness of time does not permit one to go into detail with these

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judgments. What is formulated in one of them applies to all: All soldiers must know that also in occupied territory the life and property of others will be fully safeguarded. This was the general attitude in the Navy and the severity of the penalties inflicted proves how seriously it was taken.

I need say but a few words concerning the order of spring 1945, in which a German prisoner of war, an N.C.O., was presented as an example, because he had in a prison camp unobtrusively and according to plan had communists liquidated, who attracted attention. As Wagner recalled, it was actually the liquidation of an informer. But the facts were camouflaged in the manner mentioned in order not to give enemy intelligence any clue as to the camp and the person of the NCO. That this order in its true principle was capable of being justified cannot be doubted by anyone, in view of the enormous number of political murders which have been committed with the toleration or assistance of governments engaged in the war, and the perpetrators of which are today extolled as heroes. I cannot, however, seriously consider that the unfortunate camouflaged wording could be proof of a general plan to liquidate communists. An order issued for the protection of communists will reveal the true circumstances.

A sergeant had stolen in a hospital blankets which were intended for Soviet prisoners of war and had broken out a dead prisoner's gold teeth. This sergeant was condemned to death by a Naval Court and executed after the sentence had been confirmed by the Commander-in-Chief. Finally, the Prosecution also established a connection with the Jewish question through a statement in which the Grand Admiral speaks of the "lingering poison of Jewry." Here I wish to say:

Doenitz knew as little of the plan for the destruction of the Jews as he did of its execution. He knew of the evacuation to the Government General of Jews living in Germany. I do not think that this evacuation can be condemned at a time when deportations of Germans on a much larger scale are taking place before the eyes of the world silently looking on. Here, too, I refer to a sentence of long penitentiary terms against 2 German sailors. Together with some Frenchmen they had robbed French Jews. From the opinion of the Court I again quote a sentence which characterizes the general attitude: "That the crimes were committed against Jews does not excuse the

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defendants in any way."

In the same way it seems to me that the efforts of the prosecution to include Admiral Doenitz in their interpretation of conspiracy by way of the so-called fanatical Nazi have failed.

He was neither a member of the Party nor was he ever politically prominent until his promotion to Commander-in-Chief of the Navy. The assertion of the Prosecution that he became Commander-in-Chief of the Navy because of his political attitude is without any foundation. He had no reason to participate in National Socialism afterwards, because to him, as a professional officer, every political activity was forbidden according to the Compulsory Service Law. However, he, too, like millions of other Germans, recognized the unique success of Hitler's conduct in social and economic fields and, of course, also the liberation from the obligations of Versailles which concerned him as a soldier especially. Therefore, he served entirely without political activism but in loyalty to the National Socialist State when he received his promotion to Commander-in-Chief.

Therewith two new elements arose in his relations to National Socialism. There was first of all his personal contact with Adolf Hitler. Like almost everyone else who had personal connections with this man, he too was most deeply impressed. To the respect for the Head of the State, and faith to the Supreme Commander, which the professional officer is trained in, to this was added the admiration for the Statesman and Strategist. It is difficult to understand completely such an attitude, from the information as conveyed by this trial, I neither feel qualified nor capable to judge a personality like Adolf Hitler. But one thing seems to me certain, namely that with the art of an expert he

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skilfully concealed the camouflage from the human standpoint, objectionable traits of character, from those of his co-workers to whom he did not dare to reveal this part of his nature. The Hitler with whom the new Commander-in-Chief of the Navy became acquainted at that time and whom he venerated was therefore entirely different from the the one which the world- rightly or wrongly -- sees today.

The second new element in the relations between the Grand Admiral and National Socialism consisted in the fact that in the performance of his military duties he necessarily came in contact with the political authorities of the Reich. Whether he needed more men, more ships, or more arms, it was in the end always political authorities with whom he had to discuss matters. In order to be successful in his demands it was necessary that all political mistrust be eliminated from the very start. He did this intentionally and demanded the same of his subordinates. To him the Party was not an ideological factor but rather the actual representative of the political pow He was linked with it in the common aim to win the war. For the achievement of this aim he considered it as his ally. But for the advantages which one expects of an ally, one must be willing to make certain sacrifices, overlook certain faults, and to ignore controversies.

The connection with the Fuehrer, however, and the contact with the Party which were concomitants of his position and of his duties as a Commander in Chief of the Navy, never led him to participate in anything for which he could not assume the responsibility before his conscience. Exactly some points of the prosecution prove this. The Fuehrer demanded action against the shipwrecked; Admiral Doenitz rejected it. The Fuehrer was for withdrawal from the Geneva Convention; Admiral Doenitz was against it. He stubbornly and successfully resisted the Party's influence upon the Armed Forces. Thanks to his resistance the National-Socialist educatio al officers did not become political commissars, but were, as genuine officers, merely advisers to their commander, who retained the sole responsibility of leadership of his unit. The transfer of proceedings against soldiers on political grounds from the military courts to the People's courts, which had been advocated by the Party , was prevented by Admiral Doenitz until the winter of 1944 - 1945, and afterwards, in spite

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of a Fuehrer order, never carried out in the Navy. Thus he never identified himself with the Party and therefore certainly cannot be held responsible for its ideological endeavors or its excesses, no more than in foreign politics a government would be ready to assume the responsibility for such things committed by an ally.

I do not by any means want to give the impression that Admiral Doenitz was not a National Socialist. To the contrary, I want to exactly use him as an example to prove the incorrectness of the thesis that every National Socialist as such must be a criminal. This Tribunal is the sole instance where authoritative personalities of the allied chief powers are occupying themselves intensively with the last twelve years of the German past. It is, therefore, the only hope of very many Germans for the removal of a fatal error which caused the weaker characters of our nation to become hypocrites and thus prove a decisive obstacle on the road to political recovery.

When, after these explanations, I am entering into particulars of the charge that Admiral Doenitz had, out of political fanaticism, protracted the inevitable surrender, then I am doing so because of a particular reason. This charge, which does not seem to have anything to do with the indictment before an international tribunal, weighs particularly heavy in the eyes of the German people. This nation truly knows what destructions and what losses it has yet endured in the months from February until May 1945. I submitted declarations of Darlan, Chamberlain and Churchill from the year 1940, in which these statesmen, in a critical hour of their country, called for desperate resistance, for the defense of every village and of every village and of every house. Nobody will conclude therefrom that these men were fanatical National Socialists. The question of unconditional surrender is, indeed, of such colossal import to a nation, that, in fact, it is possible only after the events to judge whether a statesman who had to face this question did or did not do the right thing. Admiral Doenitz, however, was not a statesman in February 1945, but the supreme commander of the navy. Should he have requested his subordinates to lay down arms at a time when the political authority of the state still considered military resistance as opportune and necessary? Nobody will demand this in

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earnest.

To me the question appears to be far more difficult, whether he, whom Hitler esteemed so much, should not have had the duty to point out to Hitler with all due clearness the hopelessness of a prolonged resistance.

Personally, I would be inclined to affirm such a duty towards his people, if he had himself considered at that time a surrender was justified. He has not done so, and has stated the reasons herefore. Surrender implies stopping the armies and stopping the population. The German army on the Eastern Front -- still more than two millions strong in February 1945 -- and the entire civilian population of the German eastern provinces would therefore have fallen into the hands of the Soviet armies, and this in a bitter cold winter month. Admiral Doenitz, therefore, was of the opinion -- shared by Colonel General Jodl -- that the human losses occurring in such a manner would have been far greater than those which a protracting of the capitulation until the warmer season should of needs have caused. Only in future years, when more exact evidence concerning casualties of the army and of the civilian population, both before and after the surrender in the East and in the West, will be available, there will be a possibility to judge the objective truth of such an interpretation. But it may yet be said today that such arguments were exclusively founded upon a stern consciousness of responsibility for the life of the German people.

The very same consciousness of responsibility caused him, after his assumption of the office of heard of the State on May 1st 1945, to cease hostilities against the West, but to protract, on the contrary, the surrender to the East for a few days, days in which hundreds of thousands were able to escape in a Western direction. Since the moment when he got -- to his own complete surprise -- a political task, he has avoided, with an intelligent hand, a threatening chaos; he has prevented desperate acts of masses without leaders, and has assumed responsibility, for the German people, for the gravest action which a statesman can make at all. To come back to the beginning of the indictment, he has not done anything to start this war, but has taken decisive steps to end it.

Since that moment the German nation has learned much what it did not expect, and more than once the unconditional surrender, which the last head

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of the State has carried out, has been pointed out. It is for the Tribunal to decide whether, in the future, this nation will be referred to the binding value of the signature of a man who is being outlawed as a criminal, in front of the whole world, by his very partners in the treaty.

In the beginning of my statement I have referred to the doubts which any trial against war criminals is bound to induce in the heart of any lawyer. They weigh upon everyone who bears a co-responsibility for such a trial. I could not better mark the task of all the responsible persons than by quoting the words coined by a British attorney about the trials before the German Reich court in the year 1921. I quote:

"The War Criminals' trials were demanded by an angry public rather than by statesmen or the fighting services. Had the public opinion of 1919 had its way, the trials might have presented a grim spectacle, of which future generations would be ashamed. But thanks to the statesmen and the lawyers, a public yearning for revenge was converted into a real demonstration of the Majesty of Right and the Power of Law."

May the verdict of this Tribunal be valid in a similar way before this judgment of History.

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THE PRESIDENT: I call on Dr. Siemers for the defendant Raeder.

DR. SIEMERS (Counsel for the defendant Raeder): Gentlemen of the Tribunal, in my final pleading for the defendant Grand-Admiral Dr. Raeder, I should like to keep to the order I chose for my document book and for the w presentation of evidence. I think a survey of the whole case will thus be easier.

Raeder, who has just turned 70 years of age, has been, ever since the ag of 18, that is to say for half a century or so, and in an eventful period, exclusively a soldier, body and soul. Although he has never known anything but his duties as a soldier, the Prosecution has accused him, in this major trial against National-Socialism, not only as a soldier, namely as commander-in-chief of the German Navy, but -- what is singular and decisive -- as a politician, as a political conspirator, and as a government member, altogether three things which he in truth never was.

I am, therefore, faced with the singular task of defending Raeder as a politician, although it was precisely, as I shall demonstrate, his life principle to be completely detached from politics as an officer and to comman an officers' coprs and a navy which were likewise committed to remain entirel free from politics.

If the Prosecution levels such manifold and grave accusations at Raeder, this is primarily due to the fact that they have constructed an entirely foreign notion of the German Wehrmacht, namely the notion of an admiral responsible for the foreign policy and for the outbreak of a war.

I intend to stand up against this conception and to demonstrate that this conception is equally unjustified and unfounded as regards Hitler's National-Socialist state. True, Hitler has repeatedly placed politics in the forefront of the nation and endeavored to educate the nation in one political direction only. Foreign countries knew this, and they would therefore be all the more surprised by the fact that Hitler refrained from such political interference in one single instance. Every administration, every organization, and every police institution was run by Hitler on political principles with the single

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exception of the Wehrmacht. The Wehrmacht, and indeed the navy im particula remained for a long time and far into the war absolutely unpolitical. And n only did Hitler give Raeder an assurance to this effect, but Hindenburg as President, had also given the same assurance. This explains the fact, whic has also been made clear in this trial, that up to 1944 an officer could not be a member of the Party or suspend his membership if he was in the Party.

After I have made these preliminary reflections, it will be understood why Raeder, as shown by his interrogation, was disconcerted and amazed by these accusations which amount to a political charge. A man who is altogeth a soldier cannot understand why he is suddenly and without any relation to his military duties made responsible for things which at no time came within the compass of his activity.

I shall naturally discuss the military accusations, with the exception of the U-boat warfare, which, for the sake of uniformity, has already received the attention of Dr. Kranzbuehler for Raeder, too.

It will be seen from other military accusations -- as for instance in t case of Norway and Greece -- that time and again the discrepancy between the points of view of politics and of the military is the following: Raeder act as commander-in-chief on the basis of military considerations, and the Prosecution calls him to account out of political considerations, thus considering military actions as political ones.

The first case of this discrepancy just described lies in the accusations which have been raised against Raeder already for the period before 1933, which means before National-Socialism. For this time the peculiarity has to be added that Hitler, the head of the alleged conspiracy for the wagi of wars of agression, does not even yet rule in Germany, and yet there is already supposed to exist a common conspiracy between Hitler and a part of the defendants.

This is all the more surprising, as Raeder, as a naval officer and sinc 1928 as Chief of the Naval Command, had at that time nothing at all to do wi National-Socialism, and he did not even know Hitler and his co-workers in the

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Party. The accusations concerning the violations of the Versailles Treaty are included in the conspiracy by the prosecution, although the violations w not carried out under Hitler's leadership, but rather under the leadership or with the approval of the then democratic government in ?Germany. This sh that the indictment does not only want to hit National-Socialism with this trial, as has been emphasized again and again during the war and after the collapse, but, beyond that, it affects large circles in Germany that had nothing to do with National Socialism and partly even were direct enemies of National-Socialism.

For just this reason it was so extraordinarily important for me, in the presentation of evidence in the Raeder case, to clear up the question of the violation of the Treaty of Versailles. I tried to do this in minute detail and with the approval of the Court. I am of the firm opinion that I have succeeded. I do not need to discuss in detail the precisely treated infractions which the Prosecution has produced in Document C-32. It should be sufficient if I refer to the extensive presentation of evidence, as well as t following facts:

Every single point was a mere trifle or else was a military measure, such as, for example, the anti-aircraft batteries, and others, which were based exclusively on ideas of defense. Raeder has plainly admitted that treaty infractions occurred, in which, however, the smallness of the infractions showed that these could not possibly be connected with an intentior to wage a war of agression.

Going beyond this, I need only to point out that from the legal point of view a treaty violation cannot ipso jure be a crime. Surely the violation of a treaty between nations is no more permissible than the violation of a contract between private firms in commercial law. Such a violation is, however, not a punishable action, much less a crime. Also, according to the argument of the Prosecution, an action would be punishable only if the violation were the result of a criminal intention, and so was aimed at agressio in contradiction to the Kellogg Pact.

However, the prosecution authorities themselves can no longer maintain

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this, and have indirectly admitted it by no longer taking up these points during the cross-examination of witnesses.

The case is somewhat different with the charge only discussed in detail by the Prosecution during cross-examination concerning the participation nav in U-boat constructions in Holland, for which the Prosecution has relied upo Document C-156, the book by Naval Captain Schuessler entitled, "The Navy's Struggle Against Versailles", as well as on the statements contained in the notes of the naval historian, Admiral Assmann, found in Document D-854.

These documents prove that the German navy had a part in a U-boat desig ing office in Holland, namely the firm N.V. Ingenieurskantoor voor Scheeps- bouw. This participation falls into the period before the navy was under Raeder's command. The Court will recall that Raeder did not become head of the navy until 1 October 1928, whereas participation in the Holland designing office dates back to 1923 and the following years.

I beg to note, however, that in not a single case was a U-boat built fo the German navy and that consequently no U-boats were purchased or put into commission by the German navy, either. In this connection, I refer to the Versailles Treaty, Raeder Exhibit No. 1. In Article 188, following, of the Treaty of Versailles, will be found the regulations about the navy. Accord- ing to Article 188, Germany had assumed the obligation of delivering her U- boats to the Allied Nations, or of dismantling them. This obligation Germany fulfilled completely. Moreover, Article 191 stipulates the following:

"The construction and purchase of all undersea vessels, even for commercial purposes, if forbidden in Germany".

It appears from this clear clause of the Treaty that the participation i Dutch firms was not a violation of the Treaty of Versailles. According to Article 191, Germany was only forbidded to construct or purchase U-boats, moreover, strictly speaking, only in Germany.

As a matter of fact, no U-boat was built in Germany contrary to the Treaty. But as a matter of fact, no U-boat was built for Germany abroad, either. Participation in a foreign submarine designing office was not

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forbidden, nor was this the meaning or the sense of the Treaty of Versailles. The decisive point was merely that Germany did not create a submarine force. The navy, however, was permitted to participate in a designing office so as to be kept informed in this way about the field of modern submarine construction and to gather information for the future, and thereby to lay the foundation for a possible construction of submarines later on, when permitted by educating a technically trained cadre. (See Raeder Exhibit No. 2, Lohmann Affidavit.)

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The above-mentioned documents, submitted by the Prosecution, prove that the submarines designed by the Dutch firm and built abroad were put into service abroad, namely in Turkey and by Finland.

Even if one takes the point of view that designing work also was prohibited, then what has been said in paragraph I is also valid here. The designing was limited to only a few submarines, so that the small number of them in itself proves that there cannot have been any intention to wage wars of aggression.

3. Even if the High Tribunal is unwilling to follow my preceding train of thought without more further development, going even beyond this, the lack of an aggressive intention appears from the fact that the trivial violations of the treaty are in a certain way compensated for, I take the liberty to refer to the second affidavit of Admiral Lohmann, Raeder Exhibit No.8. It appears from this document that according to the Treaty of Versailles, Germany was allowed to build 8 armored ships, but however, only built 2 armored ships, and it appears further that instead of 8 cruisers, only 6 cruisers were built up to 1935, and instead of 32 destroyers or torpedo boats, only 12 destroyers and no torpedo boats were built. As a matter of fact, the navy stayed far behind what was permitted by the Treaty of Versailles with respect to the really important weapons, and especially in those which may be considered as weapons of offense and indeed to such an extent that in comparison the trivial violations in naval matters hardly count.

4. According to the Weimar Constitution of 11 August 1919, articles 47 and 50 (Raeder Exhibit No.3) the President of the Reich has Supreme Command of all the armed forces. In order to be valid the decrees of the President of the Reich require the counter-signature of the Chancellor of the Reich or the appropriate Reich Minister, and thus the Minister of National Defense. "Responsibility is assumed with the counter-signature." Thereby, in National law it is absolutely clear that the responsibility rests with the Minister of National Defense, that is, with the Reich Cabinet and the President of the Reich. It is, of course, true that before 1928, and so before Raeder became the responsible chief of the naval command, a few measures were taken without the knowledge of the Reich Cabinet. In the presentation of evidence, however, it has been clearly shown, especially by the statement of former Reich Minister Severing, that from the moment when Raeder became chief of the naval

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command, contrary to the statements of the Prosecution, no more secret measures were taken. Severing has confirmed that the Mueller-Stresemann-Severing Cabinet, in a Cabinet meeting of 18 October 1928, obtained a clear picture of the secret measures of the armed forces by interrogating Raeder as chief of the naval command and Haye as chief of the army command.

Both Raeder and Heye, after they had given an explanation, were obliged by the Cabinet, in conformity with the above-mentioned paragraphs of the Reich Constitution, to take no measures in the future without the knowledge of the Minister of National Defense, that is,the Cabinet. At the same time the parliamentary cabinet established that the secret measures taken before Rader's time were only a question of trifles and expressly assumed the responsibility for them. If, however, the Cabinet, in conformity with the Constitution, assumed the responsibility, this is a legally and constitutionally effective proceeding which exonerates Raeder as Chief of the Naval Command and relieves him of responsibility. It seems, therefore, inadmissible that the defendant, who no longer bears the responsibility, should be made responsible for actions for which the Cabinet assumed the responsibility.

The attitude of the Cabinet in the Cabinet meeting of 18 October 1928, however, further shows that all these actions cannot have any criminal intention to wage a war of aggression as their basis, for even the Prosecution will not want to assert that men like Stresemann, Mueller and Severing had the intention of waging wars of aggression, but will have to believe Severing that Stresemann, Mueller and himself only assumed responsibility for these violations because these violations were only based on ideas ofdefense. One will also have to believe Severing that thoughts of defense were justified in the boldest measures, only not war."

I even will not go as far as Mr. Justice Jackson, but I believe that the measures taken by the Navy are certainly covered by hiw own trend of ideas about the "boldest measures."

The British Prosecutor, Mr. Elwyn Jones, attempted during the cross-examination of Severing to prove that Raeder did not observe the obligations of the cabinet meeting of 18 October 1928 because Severing, according to his testimony, was not informed of the construction abroad of the smallsubmarines for Turkey and for Finland. Against this, two things must be considered:

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a. During his testimony, Severing did not remember details, but only the fundamental and decisive questions, and moreover, he naturally relied on the competent technical minister, thus the Reichswehr Minister, concerning details.

b. According to Severing's testimony it was an exceptional case on 18 October 1928 when the Chief of the Navy High Command appeared before the entire cabinet. Raeder as Chief of the Navy High Command was not obliged to inform all the members of the cabinet from time to time, but was, in accordance to the Const itution, merely obliged to inform the incumbent Reichswehr Minister. But Raeder did this. Whatever the Reichswehrminister on his part submitted then to the other members of the Cabinet and the Reichstag, is not only beyond Raeder's knowledge, but is also not his responsibility for this.

In conclusion, I take the liberty to point out only the following:

If, despite all this, the prosecution wants to consider the discussed violations of the Treaty of Versailles on the part of the Navy as an intention of aggression, the then incumbent Social Democratic or Democratic Government bears the responsibility for this.

With this the indictment collapses relating to this period. For to hold the then incumbent governments to account for theintention to wage wars of aggression would mean to prosecute on this point "ad absardum."

5. Also the treaty violations during the period from 1933 until the German-English Naval Agreement of 1935 show the same actual and juridical picture. Also during these approximately 2 years, no decisive expansion of naval armament took place. The only disputable accusation made by the Prosecution in this respect is in Document D855, which was submitted during cross examination. It concerns the report of Flottenintendent Thiele. According to this it was decided in March 1935, thus few months before the naval agreement, to make the plans for the "Scharnhorst" and the "Gneisenau" with 27,000 tons displacement, although at this moment a limit of 10,000 tons displacement according to the Treaty of Versailles was still formally in force for 3 months, in contrast to the 35,000 tons displacement provided for in the naval agreement of 1935.

In this, I beg to take into consideration that already in March 1935 Germany could count on a speedy conclusion of a German-English agreement, while

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much more time passes from the planning stage until the completion of a battleship, which cannot be counted in months, but in years.

As a matter of fact, the "Scharnhorst" and "Gneisenau" were not commissioned until 3 or 4 years after the Naval Pact, i.e. in 1938 or 1939 (see Raeder Exhibit No.2, affidavit Lohmann, under IV).

The other matters enumerated by the Prosecution are again trifles; for instance, the selection (not the construction, as the Prosecution terms it) of 4 to 5 merchantmen (see C 166), or the construction of 5 E-boats at 40 tons each, (See C 141) which, for technical reasons, were constructed, and 12 torpedo boats of 200 tons each. The Prosecution cannot in all seriousness severly blame this all the more so as the above-mentioned deviations from the Versailles Treaty were well known to foreign technical specialists or -- as the witness Schulte-Moenting termed it succinctly -- they were an "open secret."

6. And now the most decisive juridical angle in judging all developments until the summer of 1935. Rights accorded by a Treaty between states are of equal validity with those accorded by Commercial Law. Breaches of agreement are considered adjusted and settled with the signing of a new agreement. In the present case the "Anglo-German Naval Agreement of 18 June 1935" -- Raeder Exhibit No. 11 -- stands for the new treaty. This Naval Agreement brings complete deviation from the Versailles Treaty with respect to the high-tonnage vessels as well as the U-boats. It is only on the basis of the ratio permitted Germany by this new agreement that the insignificance of the previous very small violations of the Versailles Treaty becomes apparent.

10,000 tons cruisers were replaced by 35,000 ton warships, and the ban on the construction of U-boats was replaced by equality in U-boat tonnage. Germany's demands were not unreasonable; quite the contrary, His Majesty's Government of the United Kingdom, in the above mentioned document, explicitly confirmed the German proposal "as an exceedingly important contribution to future limitation of naval armaments."

This agreement between England and Germany makes the debate on the Versailles Treaty obsolete factually and juridically, as far as the Navy is concerned.

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This Naval Agreement was generally welcomed on the part of England and Germany. The Naval Agreement was supplemented by a new agreement on 17 June 1937 (see Reader Exhibit No. 14). As proof, of the fact, that the navy has violated also the Naval Agreement, with aggressive intentions, the prosecution has raised two charges :

1. In the Agreement of 1937 both contracting Governments were bound to a mutual exchange of information, namely annually, within the first four month of every calendar year, with reference to details of the building program. According to document C 23, the navy violated this obligation in so far as it gave the displacement and the draught of both battleships "Bismarck" and Tirpitz" which were being built at the beginning of 1938, as too low, namely 35.000 tons instead of 40700 tons. The fact of this violation is openly admitted by Raeder, but here as well, it is not such a great violation as it is described to be by the Prosecution, namely there is no violation which shows any grounds for proof of criminal intention. This is shown in the exhaustive descriptions in my presentation of evidence and in the testimonies of witnesse which I do not need to repeat here. It will be sufficient if I refer to the absolutely convincing testimony of ship building director Dr. H.C. Suechting, which I have submitted as Raeder Exhibit No. 15. The tonnage increases demanded by the navy during the construction were to be used exclusively within the concept of the defensive, namely the idea to increase the armor plating of the battleships and to arrange the bulkheads in such a way that the battleships should be as much as possible unsinkable; a concept of the defensive which, as Dr. Suechting emphasizes, has proved to be actually correct during the combatting and sinking of the battlership "Bismarck". But as it is a question of concept of the defensive, no aggressive intentions can beconstrued from this treaty violation.

In judicial connection, it must be added that a right was conceded unde certain conditions in the naval agreement of 1937 in articles 24, 25 and 26 that the contracting governments may deviate from the contracted agreements and especially from the tonnage limitation of battleships, if any other sea power builds or acquires larger battleships. This case of article 25 occurred and the violation of the agreement consists solely in the fact that the navy had certainly a right to build henceforth larger battleships but should

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have informed England that Germany wanted to make use of her right. It concern only the violation of the obligation for exchange of information. How meaningless this measure was is proved by the alteration of the German-English Naval agreement based on the London Protocol of 30 June 1938, which I have submitted in Document Raeder Exhibit No. 16.

Already on 31 March 1938, that is only 6 weeks after the date of the document C 23, England on her part reported according to the London Protocol of 30 June 1938, that she must make use of the afore mentioned right, by virtue of article 25, and proposed therefore that the battleship tonnage will be increased from 35,000 to 45,000. This agreement was then signed by both countries on 30 June 1938, and thus the violation of agreement became illusory as is seen from the document C 23.

2. The British prosecutor has raised a second charge during cross-examination by submitting document D 854. It concerns the notes made by Admiral Assmann for his writing of history, on sheet 15 of which he writes that in the sphere of submarine building Germany followed the terms of the German-English Naval Agreement the least; 55 submarines could be contemplated until 1938; but 118 were actually completed or contracted for. These statements by Assmann are actually incorrect. In reality, Germany followed strictly all the sitpulations of the German-English Naval Agreement. Despite the assurance of equality of rights, Germany limited herself voluntarily in the Naval Agreement of 1935 to 45 %; but she reserved for herslef the right to increase this percentage at any time by friendly agreement with England. The presentation of evidence has shown (see the testimony of witness Raeder and Schulte-Moenting) that in December 1938 the appropriate negotiations took place betweem the British Admiral Lord Cunningham and the Grand Admiral Raeder, during which his Majesty's Government conceeded the increase up to 100 %. It was not clear in the presentation of evidence whether this concession was put in writing as it is to be assumed. Meanwhile I could establish that a document must have existed, certainly from the afore-mentioned Assmann-Document D 854, where on page 169 (in connection with page 161) the letter in question of 18 January 1939 is mentioned. It is necessary to say only in conclusion that the figure of 55 submarines mentioned by Assmann corresponds to 45 % whereas the

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figure of 118 submarines makes 100 % accordingly Assmann and therefore the prosecution as well are wrong : actually there is no violation at all of the Naval agreement in respect to submarin s.

THE PRESIDENT: Dr. Siemers, now that we have got a transcript of your speech, it appears to us that you might perhaps read a little bit faster. Perhaps you co ld take that up with the interpreters.

DR. SIEMERS: Very well, Mr. President.

(a recess was taken.)

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I now come to the allegation raised by the Prosecution that Admiral of th Fleet Raeder had taken part in a conspiracy for waging wars of aggression and in particular supported Hitler and National Socialism, despite his alleged knowledge that Hitler from the beginning had the intention of conducting wars of aggression.

How did Raeder come to Hitler and how could he, or rather how must he, at that time have reckoned with an intention of aggression on the part of Hitler?

As I already mentioned, it is proved that Raeder before 1933 had nothing to do with National Socialism and knew neither Hitler nor the Party collaborators; he got to know Hitler on 2 February 1933 when he and the other commanders were introduced to Hitler by Baron von Hammerstein. As chief of the Naval Command Staff, there was for Raeder only one superior, i.e. the President of the Reich von Hindenburg, who, according to the constitution and the Wehrmacht Law was the commander in chief of the whole Wehrmacht. As President of the Reich Hindenburg had appointed Hitler as Chancellor of the Reich, and thus was of necessity created a connection between Hitler and the Wehrmacht. Any decision of Raeder therefore did not come into consideration. As a subordinate to Hindenburg he had to put up with the political decision Hindenburg had taken as President of the Reich. The constitutional basis in regard to the Wehrmacht was in no way altered by the fact that Hitler came into power. As Chief of the Naval Command Staff Raeder took no part in this political decision, any more than he had taken part previously when Mueller of the Social Democratic Party or Bruening of the Center Party became chancellors of the Reich.

There was moreover no cause for Raeder to resign his post on account of his internal political decision, for Hitler explained to Raeder and the other high officers at the first conference of 2 February 1933 and particularly also upon the occasion of the first naval report in the same month, that nothing would be changed in the Wehrmacht and that the Wehrmacht was to remain outside of politics as provided by the constitution and the Wehrmacht Law.

As attested by the testimony of Raeder and Schulte-Moenting, Hitler at the delivery of the naval report explained his fundamental ideasin regard to a

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peaceful policy, for which, in spite of the friendly revision of the Versaill Treaty that he was striving for, it was necessary to come to a reasonable understanding with England by virtue of treaty, in regard to the development of the Navy in keeping with the general limitations of naval armament. Duri this conversation Hitler clearly gave to understand that he did not want to institute any Naval Armament race and that the development of the Navy was to take place only by friendly agreement with England. This was a thought whic absolutely corresponded to the fundamental viewpoint of Raeder and of the Nav It would have been absolutely out of question for Raeder on this given basis to go to his superior Hindenburg and declare that because of Hitler he could no longer hold the leadership of the Navy.

Now the Prosecution assumes that the men then holding leadership in Germany already knew Hitler's true intentions from Hitler's book "Mein Kampf". The Prosecution cited as proof several quotations partly torn from the contex of Hitler's 1924 propaganda book. This line of argument by the Prosecution does not seem right because Hitler wrote this book as a private individual, belonging to an opposition party. In this trial it has several times been pointed out that the statements of private foreign individuals are irrelevant, even when these foreigners are ever so well known and subsequently -- as in Hitler's case -- were given a position in their government. Raeder could be allowed to assume, as could anyone else, that as Reich Chancellor Hitler would not maintain all the party doctrines he defended years before purely as a member of the opposition, particularly not when the statements of Hitler on military matter contradicted these former party ideas. Moreover for the Navy, the relation to England was always decisive and in this very connection Hitler had even on page 154 of his book "Mein Kampf" declared verbatim:

"For such a policy of course there was only one possible partner: Englan

Moreover it must be said in rebuttal of the quotations submitted by the Prosecution, that they are all taken from the 1933 edition and that, in spite of great pains the General Secretary's Office has been unable to procure an earlier edition, particularly the first edition of 1925 and 1927. It is a known fact that Hitler himself in later years made changes on many points in numerous places in his book; it follows that the quotations from the 1933

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edition cannot without further ado be taken as a basis.

Would Raeder in the following years have had to realize that Hitler wanted to depart from the described fundamental idea of a policy of understanding with England, and is it possible to follow the line of argument of th Prosecution that Raeder should have refused his further collaboration at any given time before 1939?

I am of the opinion that this question must be answered in the negative, and that the necessity of negation results quite naturally from the combining of various facts which were submitted by the Prosecution or by the Defense during the demonstration of evidence:

Hindenburg died on 2 August 1934, and the Prosecution reproaches Raeder with having thereupon taken an oath and particularly that he in this oath put the Fuehrer in the place of the Fatherland.

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This case was sufficiently explained in the presentation of evidence. I must therefore only refer to the error made by the Prosecution in its assertion; the Prosecution itself produced document D-481 which indicates the official oath taken by the soldiers of the Wehrmacht on Hitler's orders. The document is a law signed by Hitler, Frick and Blomberg. According to this law it is ascertainable that it was not Raeder, who replaced the word Vaterland by Hitler, but that the latter himself had demanded that allegiance be pledged to him as Commander-in-Chief of the Wehrmacht by all soldiers. Before the issue of the decree concerning this oath, cleverly deviced by Hitler and so portentous for the following years, Raeder had neither been informed of it nor had his advice been solicited as to the textual draft of this oath. He was simply summoned to the Reich Chancellery without being given a hint as to what it was all about.

The question, what kind of oath is taken by a soldier is again a political one, a question of legislation upon which Raeder inhis capacity as soldier and Commander-in-Chief of the Navy had no influence.

The prosecution charges Raeder with having been informed of many political decisions and of having, as Commander-in-Chief of the Navy, drafted on these occasions strategic plans and preparations. It is a question of the cases of the withdrawal from the League of Nations on 14 October 1933, the occupation of the Rhineland on 7 March 1936, the Austrian Anschluss in March 1938, the incorporation of the Sudentenland in the fall of 1938 and the establishment of the Protectorate of Bohemia and Moravia in March 1939.

It deals principally with the documents designated in the footnote which I can refer to jointly in this connection.

There is one fact which is common to all these decisions namely the one, that Raeder has not politically taken part in any of these decisions. Raeder had never before been asked for any advice, he as Commander-in-Chief of the Navy, had no authority to collaborate in such decisions. Raeder's sole activity consisted in receiving these documents and messages, and in the subsequent issue of military orders, which he was supposed to draw up in anticipation of the event, should belligerent complications arise. It is

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wholly incomprehensible how a Commander-in-Chief of a branch of the Wehrmacht can be reproached for having made strategic preparations for possibly forthcoming belligerent complications. I believe, that it is the same all over the world. An Admiral never takes part in political decisions, while being obliged to make certain precautionary preparations according to these political decisions of the Government. This again is a case of the discrepancy I have mentioned before with regard to the position of a military commander, which though considered by the Prosecution to be a political one, is a purely military position in reality.

There should not be any doubt, that on the very same dates the foreign military commands, involved in political decisions or interested in them, were likewise making military plans.

No military commander would ever judge whether these political decisions of Hitler were crimes or merely offenses against International Law, and particularly not if he was never summoned to the discussions. Neither the withdrawal from the League of Nations resulting from the failure of trying to have all countries disarm according to the Versailles Treaty - nor the occupation of the Sudetenland, nor the establishment of the Protectorates of Bohemia and Moravia could be regarded by the Prosecition as criminal activities committed by the uninterested Commander-in-Chief of the Navy in the sense of the indictment. There certainly were deviations from the Versailles Treaty, but even the British Chief Prosecutor, Sir Hartley Shawcross, himself, declared on 4 December 1945 that "many objections against Versailles were possibly justified."

Even Justice Jackson has, as quoted above explained that the boldest measures would have been justified for the purpose of a revision of this treaty, but not a war.

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All these above-mentioned measures of Germany were in fact carried out without a war, and therefore come under the category of measures considered justified by Justice Jackson, even more so since they were silently tolerated by foreign countries, as for instance in the case of the incorporation of the Sudetenland, Munich Agreement of September 1938, or in the case of Austria where an agreement was made with the affected country itself.

Now, if the Prosecution, in the case of Austria or in the case of the establishment of the Protectorate of Bohemia and Moravia, rightfully points out from an impartial and retrospective point of view that Hitler had used most doubtful and possibly criminal measures for this achievement, it can have no significance for the Commander in Chief of the Navy, since it is firmly established that he was not informed about these activities, and far less about the measures used.

It has been established, in particular, that Raeder was neither informed of the details concerning the Austrian Anschluss nor of the kind of conference which ultimately ledto an agreement with President Hacha. He never knew of the discussions with Hacha, nor of the menace of a bombardment of Prague -- expressed in the xourse of this discussion - in which case I might refer to the depositions of the witnesses Raeder and Schultz- Moenting. All these measures were therefore in the eyes of Raeder, activities admitted by International Law, or agreements which could not lead him to interfere in any way or to make any inquiries of Hitler, quite apart from the fact that he as military commander would have no right whatsoever to do so.

Moreover exclusively land operations would have been involved from the military standpoint even if complications had arisen, which is evident immediately from the location of the countries concerned. It would have been impossible if the almost completely disinterested Commander-in-chief of the navy had paid attention to these things, although hardly any naval preparations were under consideration. One should keep in mind the case of Czechoslovakia, in which connection document 388-PS has a provision that the navy is to participate in possible army operations by commitment of the Danube flotilla which for that purpose comes under the orders of the High Command of the Army, a flotilla consisting of very small ships, that is of a few gunboats, if I remember correctly.

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I further quote for the argument in this connection the words of Sir Hartley Shawcross of 4 December 1945 concerning the German-Polish non-aggression pact of 1934:

"Hitler, by concluding this treaty, convinced many people that his intentions w re really peaceful."

Consequently Raeder had to be convinced too.

It is true that Raeder belonged to the secret cabinet council created in February 1938. The fact proved in the meantime, that the secret cabinet council was purely a farce, is equally correct. It is therefore unnecessary to deal with this point which was in the beginning considered so important by the Prosecution.

The claim of the Prosecution that Raeder had been a member of the government and Reichsminister has been refuted in the same manner. This claim of the Prosecution has been incomprehensible from the start. Document 2098 PS presented by the Prosecution only states in an absolutely unequivocal manner, that von Brauchitsch the Commander-in-chief of the Army and Raeder the Commander-in-Chief of the Navy held a rank equivilant to that of a Reich Minister." This proves, that he was no Minister but for reasons of etiquette held a rank equal to that of Reich Minister. This makes it evident that Raeder was not assigned any political task through this decree of Hitler, as the Prosecution would like to have it.

There is the fact to be added that through this decree he did not even receive the right to participate in cabinet sessions if he wished to do so, but, as stated by Hitler in the above-mentioned document only, "upon my order". This therefore means nothing more that that Raeder could have been called upon to participate in a cabinet session if technical naval problems w re involved. In reality this politically unmaterial, hypothetical case never did occur.

The participation in the Reich Defense Council on the basis of document 2194 PS can also not be considered incriminating. On the one hand it deals, as becomes evident from the text, only with "measures for the preparation of Reich defense", therefore not with political activity nor with activity connected in any political sense with aggressive war.

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Moreover, Raeder, contrary to the claim of the Prosecution, according to Documen 2018-PS, a later issued Fuehrer decree of 13 August 1939, did not at all belon to the created Ministerial Council for Reich Defense at that time, and this simply for the reason that he was not a Minister.

On the other hand other countries, too, have the institution of Reich Defense Council or Reich Defense Committee. I want to remind you of the well-known fact that there existed in the British Government already a long time before the First World War a Reich Defense Committee which was of much greater importance than the equivalent institution in Germany.

As the last item in this connection, I want to point out that the claim of the Prosecution that Raeder had been a party member has also proved untenable. It is true that Raeder received the golden insignia of honor from Hitler; this was nothing else, however, than the award of a medal and it couldn't be anything else, because a soldier could not be a member of the Party. This becomes evident beyond doubt from Paragraph 36 of the Armed Forces Law, according to which soldiers can never engage in politics and which forbids them to be a member of a political organization.

Besides, I want to refer to the presentation of evidence, which proved sufficiently that Raeder never had connections with the party, that he rather had differences of opinion with party circles and that he was spurned by typical National Socialists because of his political and religious attitude; for instance he had on Goebbels the same effect as a red rag on a bull, and this was no wonder either, for on the one hand he prevented the Party again and again from obtaining any influence on the officer corps of the navy, and on the other hand assisted the Church to the greatest extent, contrary to the principles of the Party, and saw to it that the spirit of the navy received a Christian basis. I may refer in this connection to the typical National Socialist phrase of Bormann:

"National Socialistic and Christian concepts
are incompatible."

In the same document Bormann, as he so often did, expressed himself so strongly in a train of thought contradictory to the culture against Christianit so violently propagandized for the destruction of all Christian ideas, that this attitude toward the party sufficiently proves that Raeder, as a convinced

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Christian never could have affiliated himself with the Party.

I have already stated that Hitler in 1933 said that it would be one of the fundamentals of his policy to make Germany by peaceful means a sound and strong nation and that it was absolutely necessary for peaceful development to acknowledge British hegemony and to come to an agreement with England about the size of the German fleet and, if possible, even to come to an alliance. These ideas agreed with the fundamental attitude of Raeder, who stated it in detail during his examination. Within the limits of my defense, it may be an open question, if an when Hitler abandoned that basic thought. For in any case Hitler has always emphasized this basic thought to Raeder and also supported it by deeds; this ever recurring thought runs like a red thread all through the years until the outbreak of war. The realization of this thought led to the conclusion of the German-British naval agreement in 1935, the conclusion of the German-British naval agreement of 1937, the agreement about submarines with Lord Cunningham in 1938 and to the London protocol of 30 June 1939 concerning the battleships. This, throughout the years of the reconstruction of the German navy runs always the same idea, namely ever the idea of agreeing with England, of acknowledging England's supremacy and of avoiding any difference which might lead to a break with England.

Subsequently, in the full knowledge of all the documents and all the facts proved during this trial, it may be an established fact that Hitler at some time, probably in 1938, may have become unfaithful to his own thought and that thereby he has become guilty of the tragic fate of Germany.

In order to judge the accusations made against Raeder the decisive thing is not that which must be acknowledged as being objectively true after having a knowledge of all facts, but the only decisive thing is whether Raeder has realized or could ever possibly know of this deviation by Hitler from his own ideas. This, however, is not the case, Raeder could not guess, and even less know that Hitler had at any given time become unfaithful to his own political ideas which he had repeatedly stressed and demonstrated and thus had become guilty of instigating the frightful danger of World War II.

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Raeder could not suspect or know that also in the last period before the war, Hitler spoke to him differently from what he thought, and also spoke differently from the way he acted. In the matter of the Navy, in particular, the relatively slow rebuilding of the German fleet showed that Hitler intended to remain faithful to the train of thought I referred to. A change of mind on Hitler's part in this connection was not perceptible; for a change of mind would have had precisely the result that he would have developed the navy to a larger extent than he did. He would then have had at least fully to exploit the possibility of the German-British naval agreement as to the size of the respective fleets. According to the naval agreement, the German fleet was allowed a total tonnage of 420,395 tons. As a matter of fact, this maximum was never reached. Even in regard to battleships, Germany remained short of the naval agreement, with the result that the battleships "Bismarck" and "Tirpitz" were not available in the first year of the war, and therefore could take no part in the occupation of Norway; the "Bismarck" was completed only in August 1940, and the "Tirpitz" in 1941.

According to the naval agreement, Germany was allowed to have the same tonnage of submarines as England. Actually, however, U-boat construction was so little speeded up, that at the beginning of the war in 1939, as the evidence has proved, Germany had available only the minimum figure of 26 submarines suitable for Atlantic service. And further, as late as end of May 1939, according to document L.79, the so-called "Little Schmidt" was instructed verbatim that "nothing is changed in the shipbuilding program".

All this must have awakened the strong belief in the commander in chief of the navy, from his point of view, and from this field of action, that Hitler would stand by his oft stressed basic line, not to allow a war to come to pass.

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This strong belief of Raeder, and this seems important, was to the utmost extent strengthened by the attitude of foreign countries:

Winston Churchill wrote in 1935 in his book, "Great Contemporaries":

"It is not possible to pass just judgement on a personality in public life who has reached the enormous proportions of Adolf Hitler, before his life's work stands revealed before us as a whole..... We cannot say whether Hitler will be the man who once again will unleash a world war in which civilization will go down irrevocably, or whether he will enter history as the man who has restored the honor and the peaceful intent of the great German nation, and has brought it back, cheerful, helpful and strong to the front rank of the European family of nations".

One year later, at the Olympic Games in Berlin in the year 1936, the representatives of the foreign countries appeared in a body and greeted Hitler in a manner which, in its approval and partial enthusiasm, was incomprehensible to many Germans who were sceptically inclined. Subsequently, the greatest foreign politicians and also members of various governments have visited Hitler and reached a complete understanding with him, and finally, in the autumn of 1938, an understanding was again reached under Chamberlain and Halifax which strengthened Hitler immeasurably, and by means of which Hitler tried to prove to the Germans, how correct all of his actions had been, as they were being recognized by foreign countries. The proclamation defining their aims, which was issued by Hitler and Chamberlain in Munich on 30 September 1938, cannot be estimated high enough. I would, therefore, like to cite the two first decisive phrases from Raeder Exhibit No.23:

"Today we had a further discussion, and agree in the realization that the question of German-English relations is of primary importance for both countries and for Europe.

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"We regard the agreement which was signed last night, and the German-English Naval Treaty as symbolic of the wish of our two nations never again to conduct war against each other".

I believe, that these references are sufficient, and ask: Can it be demanded that a German Grand-Admiral, who has never been a politician and always only a soldier, should have looked farther ahead in judging Hitler than the great British statesmen, Chamberlain and Churchill? I believe that the form of the question already harbors the negative form of the answer.

The Prosecution can only seriously confront these numerous points of view with some few documents which might speak for Raeder's knowledge of Hitler's affressive plans. The Prosecution has presented indeed, innumerable documents in which it pointed out that Raeder or the Naval Operations Staff or the Supreme Command of the Navy received a copy. However, in a very considerable number of documents the Prosecution could not state anything beyond the fact that Raeder received a copy, while a realistic connection on the subject did not exist for the most part and was not presented by the Prosecution either. It is naturally not surprising that military documents, for the sake of uniformity, went to all branches of the armed forces, even if in individual cases one branch of the armed forces was not at all, or hardly concerned with them. Of all these documents in the case of Raeder, only the 4 documents which the Prosecution described as key documents, because of their importance, can be really incriminating. These are the four speeches of Hitler, when he was commander-in-chief of 5 November 1937, 23 May 1939, 22 August 1939, 23 November 1939, to the Commanders-in-Chief.

The Prosecution claims that these speeches show participation in the conspiracy, and that it could be clearly recognized from these

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speeches that Hitler wanted to wage wars of aggression. I would therefore like to state my opinion in detail as to these documents, and in so doing show why these documents cannot influence the picture which I have given as a whole.

Doubtlessly these key-documents are of the utmost importance for subsequent historical findings as to what trains of thought have directed Hitler and for the reason that they are expressions of opinion by Hitler, and in spite of the large extent of the captured documentary material there exist almost no written drafts by Hitler. First of all the thought is also no written drafts by Hitler. First of all the thought is also attractive that the contents must be ture, because they deal with expressions of opinion which were only expressed before a small circle, before which Hitler, in accordance with his nature, preferred to express himself openly rather than in his public speeches. Even though I do not fail to recognize the value of the documents in any way, I still believe that the Prosecution overestimates by far the importance of these 4 documents. They certainly are key-documents to a certain extent, and that inasfar as they provide the key to the recognition of Hitler psychologically and to the understanding of Hitler's methods. The documents, however, are not a key to the real intentions of Hitler and particularly not a standard for the final conclusions which the listener would have had to draw from these documents, according to the opinion of the Prosecution.

In order to comprehend completely the value of the documents in this connection, I would like to group in advance several general points which apply equally to each of these 4 documents. All these points limit the evidential value of these documents which was overestimated by the Prosecution:

None of these speeches were recorded in shorthand, and therefore we do not have the actual text of any speech. In accordance with this, Hoesbach in the record of 5 November 1937 correctly chose the indirect address, just like General Admiral Boehm in his record of the speech of 22 August 1939. Surprisingly and not quite correctly, Schmundt chose the direct address in the record; however, he was at least careful, and stated in the beginning that Hitler's statements were being reproduced "according to their sense."

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The weakest documents, to wit, the two versions of the speech of 22 August 1939, submitted by the Prosecution, have chosen the direct address and the authors of this document whose names unknown, have not even considered it necessary to give an indication, as was done by Schmundt. However this may be, in considering the documents it must be kept in mind that they were not reproduced word by word, and that therefore the reliability of the reproduction depends on the manner of work and attitude of the originator of the document, especially on the fact of if an how many notes the individual made during the speech, and when he prepared his record. In connection with this appears important that the Adjutant Hossbach, as is shown by document 386 PS only made the record a full 5 days later, to wit, only on 10 November, while the speech had already been made on 5 November. In the case of Schmundt, a date for the record is missing altogether, and likewise in the two Prosecution documents regarding the speech of 22 August 1939. The latter also lacks the signature, so that in this case it cannot even be ascertained who bears the responsibility for the record at all. The same applies to the document regarding the speech of 23 November 1939, so many formal mistakes and just as many doubts concerning the value as evidence and reliability of the documen

Things are different with the document of Boehm, who in his affidavit certifies, in lieu of oath, that he wrote down Hitler's speech simultaneously and of particularly important parts jotted down the exact text, and who furthermore certifies that on the same evening he wrote down the final draft which has been submitted here. If in all these documents the true text does not exist, then it is plain how important it is if it can at least be established that the record was made simultaneously with the speech, or at least on the very same day, and not, as in the case of Hossbach, 5 days later. Even the best Adjutant with the best of memories who daily has to handle quite many new things, can not possibly make an absolutely reliable reproduction of a speech after 5 days.

Just as important is the second point, to wit, the fact that contrary to other military documents these are not official documents with a distribution list, therefore not documents which were subsequently received by those concerned.

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That the documents were not received by Raeder was established in the evidence by him and the witness Schulte-Moenting, apart from the fact that it is already shown by the lack of a distribution list on the document. This point particularly, appears of great importance to me. Listening to a speech once -and Hitler as is well-known spoke extraordinarily quickly- does not move the listener to final conclusions in the same way as the presentation of a record, by which he can always make certain inquiries about the contents of the speech We who have come to know these speeches in the proceedings by way of wirting and have again and again judged them by the wording, naturally consider the individual words and application of phrases more important than we would have done with a quickly-delivered address. In addition to this there is the fact that all of us easily tend to lend more importance to the individual applicati of phrases, because all of us now can overlook everything better from the present standpoint and out of more extensive knowledge : because we do not only have one speech to base our opinions on, but also all speeches and in addition all the many other documents which show the historical development. In discussing these documents it must again and again be kept in mind how different the individual listener will react to the spoken word, and how frequently, after a few hours even, the reports of various listeners will differ from one another.

The Prosecution sees in these speeches of Hitler the basis of the conspiracy, and presents it in such a manner, as if Hitler had on this occasion consulted with the Commanders, and had then concluded a certain plan of conspiracy with them, and had finally reached a certain decision. The Prosecution must maintain this, because in this lies the basis of a conspiracy, which can only then be spoken of if something is being planned in common. In reality contrary to what the Prosecution states no influential group of Nazis assembled in order to examine the situation and to make decisions, but it was rather a one-sided presentation by Hitler in which no discussion and no consultation took place. No decision was reached, either, but Hitler rather spoke quite generally about possi ilities of developments. As far as one could speak of resolutions at all, it was merely a matter of the sole decision of Hitler. All this stands in contrast to a real conspiracy.

I furthermore have the impression that the Prosecution, in its conception of a conspiracy to wage wars of aggression, has formed for itself a completely false picture of the real power conditions in the National-Socialist State. In my opinion. it fails to recognize the characteristics of a dictatorship and it actually may be very difficult to understand the immeasurable dictatorial power of Hitler if one has not personally constantly lived through the whole 12 years in Germany, and in particular in its developrent from the first beginnings until it finally became a dictatorship, which worked with th most terrible, the most horrible and the most undignified human terror. A dictator like Hitler, who further more obviously exercised an immense suggestive and fascinating force, is not the President of a parliamentary government. I have the impression that the Prosecution in judging the situation as a whole has never completely freed itself from the idea of the a parliamentary government, and it has never taken the uncompromising work of a dictator into account.

The extent to which the idea of a conspiracy between him and the members of the Cabinet or between him and the Commanders is averse to Hitler's mind became evident in the course of this trial through numerous examinations of witnesses. Particularly striking in that respect, was the testimony of the Swedish industrialist Dahlerus, who by reason of his contacts with England and with Germany -in each case equally excellent and extensive- was in cours of time enabled to obtain an objective picture of England as well as Germany, and who during his negotiations with Chamberlain and Halifax on one hand, and Hitler and Goering on the other hand, was best prepared to recognize the difference between the Parliamentary British Government and the German Hitler Dictatorship. The accounts of Dahlerus prove convincingly that the difference was such that no bridging-over was possible. After having spoken with Chamberlain and Halifax, a discussion with the Cabinet took place, naturally before a final decision was taken. On the other hand, in the night of 26 to 27 August 1939, when Dahlerus had a discussion of the utmost importance with Hitler in which only Goering was present , Hitler at once made 6 propositions, without saying a word to any of the Cabinet members or any of the military commanders, without even advising with Goering who sat there silentl

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proposals, by the way, which in no manner were in line with what he had said to Sir Nevil Henderson. A stronger argument against a conspiracy with Commanders or members of Cabinet there hardly exists, unless

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reference be made to the equally important fact which the witness Dahlerus added, namely that during the entire two and a half hours Goering did not once dare to open his mouth, and that it was a humiliation to see the degree of servility which Hitler demanded of Goering, his closest associate.

All of these Hitler speeches are full of contradictions. Such contradictions naturally impair clarity of thought, and they rob the individual thought of its importance. Reading documents in their entirety, the number of contradictions becomes evident, a fact on which a remark by witness Admiral Schuelte-Moenting during examination and cross-examination was much to the point. It is just because of such contradictions and inconsistent thoughts that the evidential value of documents is diminished. It is quite natural that for a military Adjutant such as Hossbach or Schmundt, it is difficult to record an unclear and contradictory train of thought; and it is equally easy to understand that a military adjutant will be inclined to introduce as clear a line of thought as possible, and because of such endeavor he may happen to stress thoughts which have become clear to him more strongly than they actually presented themselves in the orally pronounced word. To this should be added the very appropriate remark of Raeder - who not only points to contradictions, but to Hitler's extraordinary sense of imagination, and who in that respect termed him "Master of bluff".

Moreover, in every speech of that type Hitler followed a very definite tendency. He had a definite purpose in view namely to bring about a desired impression on all or some of his hearers, either through intended exaggeration or by making things appear deliberately harmless, depending upon the purpose he pursued. While he spoke, Hitler followed the intuition of the moment. As Schulte-Moenting termed it, he freed himself of his concept. He thought out loud and wanted to carry his hearers with him, but he did not wish to be taken at his word. One must agree with me that with such practices and such purposefully designed

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speeches there is at this time nothing really reliable to go by in order to discover Hitler's true opinion. In addition to that there is the following point of view for all these documents in general:

Following his address of 23 May 1939--the so-called "Small Schmundt" -- Raeder had an interview with Hitler alone, in which he called Hitler's attention to contradictions in that address and, on the other hand, to contradictions deriving from the words- a remark previously made to him by Hitler - that under all circumstances he would also settle the case of Poland peacefully. Hitler then calmed Raeder down and told him that he, Hitler, had a firm hold of matters, politically. This was stated by the witness Schulte-Moenting who added that Hitler allayed Raeder's fears by an example of the contradiction between the speeches of 23 May 1939 and his other statements. He told him, that for him (Hitler) t here were three ways of keeping things secret: firstly, the conversation with someone without other witness; secondly, the thoughts which he, Hitler, kept to himself and, thirdly, thoughts which he, himself, did not even think through to the end.

I believe this manner of thought illustrates most strikingly how little reliance could ultimately be placed on statements made by Hitler, before a small or large group of people. It seems to me quite natural, then, that in his deliberations Raeder kept neither to Hitler's general speeches nor to the address to the Commander which was discussed here, but that he went solely by what Hitler had told him when alone with him. In that respect, however, testimonies by Schulte-Moenting, Boehm and Albrecht are in agreement in that they prove that as late as the year 1939, Hitler still gave Raeder repeatedly the explicit assurance that there would be no war; that is, he did this on occasions when for some reason or other Raeder was particularly worried and wanted to call Hitler's attention to dangers ahead.

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In conclusion, I, therefore, believe it may be said that the so-called key documents are extremely interesting for a psychological opinion on Hitler; their evidential value as regards Hitler's real intentions, however, is very circumscribed and weak. No one can expect Raeder to accept, for his guidance, tendencious speeches made by Hitler before his Commanders on the spur of the moment, but he based himself on assurances given him by Hitler, with no one else present, and on the fact that until the summer of 1939, until the outbreak of the war, those assurances were in perfect accord with facts and Hitler's actions, namely, with the four Naval Agreements and the Munich Pact.

There is some justification for Rader's not permitting himself to have this basic attitude shattered by the speeches to the Commanders-in-Chief, though undoubtedly of a suspicious nature, but that he held steadfastly to his belief that Hitler would not deceive him. From the fact that we subsequently come to find that after all Hitler deceived Raeder in his private conversations, as well as by his special method of second a nd third classification of secrecy, as described a bove, no guilt is attached to Raeder, but solely to Hitler. Considering the voluminous amount of evidential matter, there is no justification in it for evidence proving that even in 1938 and 1939 Raeder planned for a war of aggression, in violation of International Law; it reveals only the intention on the part of Hitler to engage in a war of aggression, in violation of International Law.

Having dealt with the key documents in a general manner, I am now asking the Tribunal's permission to add a few points to each individual document, since the Prosecution over and over again strdssed such documents as basis for their charge of conspiracy.

Discussion of 5 November 1937 in the Reich Chancellery:

The critical phrases of this document cannot be refuted, and they were cited often enough by the Prosecution. In dis-

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cussing that document it should, at the same time, be taken into consideration that Goering and Raeder unanimously stated that Hitler announced in advance that he wished to express a certain trend by his speech. Hitler was dissatisfied with re-measures taken by Field Marshal von Blomberg, and especially those of Generaloberst von Fritsch, the Commander-in-Chief of the Army, and he felt that rearmament made but also progress in the army. As a result, Hitler made a point of exaggerating a fact known only to Goering and to Raeder, so that it is but natural that the impression of that speech on Neurath, who had no idea about this intention, was entirely different and deeply alarming.

It is interesting to note that Hitler did not fully get what he wanted, because the two last paragraphs of the document indicate that to some extent Blomberg and Fritsch saw through Hitler's scheming, and that his exaggerations failed to deceive them. Though on similar occasions Hitler did not permit discussions, Blomberg and Fritsch intervened on this occasion and pointed to the need of preventing England and France from lining up as Germany's adversaries. Blomberg explained the reasons for his protest, and in the penultimate paragraph the document unmistakably expressed his scepticism as to Hitler's words, in that he remarked that under such circumstances he would not be able to carry out his planned vacation abroad scheduled to begin on 10 November.

It is equally interesting to note that thereupon Hitler came round and, in contrast to his early statements, declared himself convinced of England's non-participation, and that, consequently, he also did not believe in military action by France against Germany.

The lack of tenability of Hitler's ideas shown in this document

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finds further expression in that he took as starting point for his statements an idea truly fantastic, namely an Italo-French-English war or -- equally fantastic -- a civil war in France. Continuing such contradictions, Hitler mentioned in his speech an application of force on one hand, an attack by Poland against East Prussia on the other hand -- something which bore out a defensive idea only; and in regard to Czechoslovakia he said that in all probability England and France had already written Czechoslovakia off their books without further ado. This hint is an indication, however, that Hitler was prepared to negotiate, and this is in keeping with actual historic developments. He mentions that Lower Austria and Czechoslovakia will be brought to their knees but, nevertheless, one year later, in March, as well as in September 1938, he carried on negotiations and settled both questions without war. This fact in particular seems very significant, in that it proved to Raeder by the events which followed that he was right in not ascribing undue importance to Hitler's rash words of 5 November 1937, because they were not supported by the fact that in reality Hitler, at a later date, carried on negotiations.

Raeder was also right when, during his interrogation, he pointed to the second Naval Pact that had been concluded with England just a few months earlier, and that as a result he could not really expect Hitler seriously to leave a path on which he was engaged.

And as a last point of view: Throughout its entire length, the document is dealing with political questions on one hand, and with possible land operations on the other. Raeder had nothing whatever to do with political questions because he was no politician; while Neurath as Foreign Minister naturally had reason to place greater importance on Hitler's political attitude. It is of equal importance that Neurath testified that, as a result of that speech, he too asked Hitler in a confidential interview for his personal attitude, and that he refused to continue in the Foreign Office because Hitler stated that those were his actual intentions. To me it seems typical of Hitler to declare to one person, namely Neurath, that perhaps he would go to war, while he told another person, namely Raeder, that he would under no circumstances make war. This difference in expressing his position obviously can be explained by the fact that at that time he no longer appreciated Neurath as Foreign

Minister, because he realized that in the foreign policy which he proposed to follow, Neurath would no longer be as yielding as a successor he had in view, Ribbentrop. On the other hand, at that time he still wanted in any case to keep Raeder as Commander-in-Chief of the Navy. This is another instance of Hitler's method of acting as the situation demanded, always and without any compunction paying homage to the principle: The end justifies the means.

Hitler's speech of 23 May 1939, "Small Schmundt", US 27. Here Hitler expresses himself once more in a most dubious fashion. He speaks of a program of aggression, of the preparation of a planned attack and of the decision to attack Poland. I in no way fail to recognize that there is good reason for the Prosecution to consider this document as particularly good evidence. I believe, however, that in the case of Raeder, and taking into account the numerous points of view I pointed out, the value of this document as evidence is very much less than the Prosecution is inclined to think, and much less than warranted by the impression first gained from the wording of the Schmundt version. Schmundt obviously madean endeavor to formulate Hitler's contradictory, fantastic and highly chaotic statements along the lines of his exact military thinking. This gives the document a clarity which is not that of Hitler. We do not know when Schmundt prepared the document, and Schmundt failed to show the copy he had made to other interested parties.

During his examination and cross-examination the witness Admiral Schulte-Moenting pointed to the contradictions of this document in particular, which I need not repeat here. Of greater importance is the decisive point, the contradiction between these words and the words which Hitler at the same time spoke to Raeder, again and again, and which always pursue the same old path, namely that he does not intend war and that he would not make excessive demands.

Raeder was horrified at that speech, and he did not calm himself until after he had a private conversation with Hitler, directly after that speech, as Hitler assured him in that personal interview that under all circumstances he would settle also the case of Poland in a peaceful manner.

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he believed him, and he had every right to conclude HITLER was telling him the truth in answer to a question eqally precise. I refer to the very precise statement on that document during the RAEDER examination and the examination of the witness SCHULTE-MOLNTING. I especially refer to the comprison HITLER used (according to SCHULTE MOLNTINGS's testimony), stating that nobody would go to Court if he had received 99 Pfennigs while the dispute involved one Mark, and concluded from it that he had received what he had asked politically, and that there could not be war because of the last political question, namely the Polish Corridor.

All the statements made by witnesses whom I called, and among them the deposition by DOLNITZ is not the last in importance, - to the effect that, incidental to the last U-boat manoeuvers in the Baltic Sea in July 1939, RAEDER EXPRESSED HIS firm conviction that in that respect he relied on HITLER's assurances. RAEDER, furthermore, knew that the navy was absolutely unfit for a war at sea against England: he had explained that to HITLER time and time again : he trusted HITLERS words and was confident that also in the Polish question HITLER would resort to negotiations again and - as shown by the testimony of the witness DAHLERUS - negotiations were in fact taking place, even successful negotiations in the beginning. The reason why the attempt finally failed after all und that it had to come to a second World War was stated in detail by the witness DAHLERUS? who thus show portrayed the awful tragedy of this event.

It seems important to me that up to August 1939 not only the witness DAHLERUS but also CHAMBERLAIN still believed in HITLER' good intentions. Therefore, here too we have the same question again and the same answer : One cannot expect RAEDER as a soldier to have been more farseeing and to have recognized HITLE dangerous ideas, if men like CHAMBERLAIN, HALIFAX and DAHLERUS themselves had not yet seen through HITLER at that time.

If I myself have referred to the seriousness and the incriminating character of this document, may I ask you to take into

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consideration that the incriminating character, just as in the document of 5 November 1937, concerns itself with political matte

As defense counsel for the Commander-inChief of the Navy, I have to judge the facts, not from the political but from the military aspect. From a military viewpoint, however, it is impossible to follow the arguments of the Prosecution under any circumstances, for the military are not authorized to take part in decisions of war or peace, but are merely obliged to make such military prepara tions as the political leaders consider necessary. In no country of the world does an Admiral have to give an opinion as to whether the possible war, for which he must make plans is a war of aggression or a defensive war. In no country of the world does the decision of the question as to whether war is to be waged rest wit the military, but on the contrary is always left to the political leaders, that is to the legislative bodies.

Accordingly, article 45 of the German constitution stipulates that the President of the Reich is to represent the Reich in questions of international law and stipulates further :

" The declaration of war and the conclusion of peace take place by national law.

Therefore, the question whether a war was to be waged against Poland rested with the Reichstag and not with the military leaders Professor JAHRREISS Has already explained that in the legal development of the National Socialist state these decisions rested in the last analysis exclusively with HITLER. From the viewpoint of my RAEDER case it is of no consequence whether HITLER would be regarded as legally authorized to start a war himself, as he actually did in the autumn of 1939. The deciding factor is only that in any case the military leaders, from either a practical or a constitutional point of view, do not have to participate in this decision. It is an untenable thought if the prosecution tries to regard as a crime every act of military planning which has taken place on the part of Germany; for the military leaders, who merely receive the order to work out a specified plan, are neither

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authorized nor obligated to decide whether the execution of their plan will later on involve an aggressive or a defensive war. It ist well known that the Allied military leaders rightly hold the same viewpoint. No admiral or general of the Allied armed forces would understand it if someone should bring a charge against him because of military plans that were made on the Allied side a long time before the war. I do not have to explain this any furthe I believe it will suffice if I refer, for instance, t the RIBBENTROP Document exhibit No. 221. This is a question of a secret document, which, according to the title concerns " Second Phase of the Anglo-French General Staff Conferences". From this document it appears that exact plans were worked out on the part of the Allied forces for a war embracing many countries; plans which, according to this document include a war in Europe and a war in the Far East. There it expressly says that the French and British High Commands in the Far East " worked out a joint pl of operations." There it expressly speaks about the importance of the possession of the Belgian and Dutch national territories as a starting point for the beginning of the offensive against Germany and the decisive point for this in this parallel military case see to me to be the fact that this document is dated from the same month as HITLER' s speech to the commanders-in-chief, which has already been discussed, namely, May 1939. The document bears the inscription : " London, May 5th 1939".

I now come to the adress of HITLER to the Commanders-in-Chief on 22 August 1939 at the Obersalzberg.

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Regarding the value as evidence of both the documents 1014PS and 798 PS submitted by the Prosecution, for the sake of brevity I should like first of all to refer to my previous statements which I made to this Court, when I made the formal proposal to cancel Document 1014 PS. Although this high Tribunal did not accept this proposal, I still believe that my statements on the limited value of this document as evidence are important, in so far that only an very small value as e evidence can be attached to both these documents and particularly to Document 1014 PS. The American Prosecution, when submitting these documents, duly pointed out that the Court should take it into consideration, should the Defense be able to submit a more accurate version of this speech. In accordance therewith I submitted the Reader Exhibit No. 77, a version coming from the witness General admiral BOEHM, and believe to have shown within the framework of the evidence that it is here a question of a more accurate version, then the versions of the Prosecution documents. Thereupon, Sir David Maxwell-Fyfe handed in two documents under Nos. GB 464 and GB 465 in which he compares in the most scrupulous way BOEHM'S version with the versions 1014 PS and 798 PS, by which he considerably facilitated the comparison of these document for all of us. In order on my part to facilitate also this comparison for the high Tribunal and for the Prosecution, I requested Generaladmiral. BOEHM in the meantime to compare the versions under consideration himself also and that by using the compilations of the British Prosecution mentioned just now. The result is to be found in BOEHM'S Affidavit w which I submitted as RAEDER Exhibit No. 129.

When surveying all this material, it results that Document 1014 PS is extremely incomplete and inaccurate, alls the more so as,apart from its formal deficienies, it is only 1½ pages long, and for this reason cannot be an adequate reproduction of a 2½ hour's speech.

Document 798 PS no doubt is better, but also reveals numerous inaccuracies as shown by BOEHM'S Affidavit. It is hot a question of every passage. The point, however, is that precisely some of the most important passages from which the Commanders - in-Chief might more likely be charged have actually not been spoken according to BOEHM' s sworn statement. According to BOEHM'S Affidavit it is not true that HITLER declared, that he had decided as early as Spring 1939, to attack the West first of all, and only afterwards to attack the East. Nor have the words been used: " I only fear that at the last moment a filthy fellow

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will submit me an offer od mediation, we shall continue in the pursuit of our political goal". And the most decisive thing is that the words: " Annihilation of Poland in the foreground, the aims is to eliminate the living forces and not to reach a determined line", have not been used; HITLER only spoke of the breaking up of the military forces.

These differences in individual words and turns of phrase are very important. For the differences lie precisely in the sharp phrasing to which the Prosecution frequently drew attention, and from which the intention of a war violating international law, even the intention to assassinate civilians, can be derived. If these phrases had been spoken, we would justly reproach the Commanders - in - Chi present with having waged the war at Hitler's order, in spite of the criminal and in view. If, however, these sentences have hot been used, but, as Boehm testifies under oath, merely sentences aiming at the establishing of a military goal, the Prosecution cannot reproach any of the Commanders- in - Chief present with having remained at their posts. No one can in earnest demand of an Admiral the resignation of his post a few days before the outbreak of a war, thus shaking the military power of his own Fatherland. I am quite sure that the most serious reproaches can be leveled at any rate against Hitler's attitude after the Munich Agreement up to the outbreak of the war in Poland, but and this is decisiv for the Raeder case - not against the military Command, but exclusively against the political Leader. We knew that Hitler himself also admitted this, and evaded the responsibility by committing suicide, without having the slightest regard even for the life and the well-being of the German people during and especially at the end for the war. I shall now come to Hitler's speech delivered to the Commanders-in-Chief on 23 November 1939, which I shall mention only very briefly. If, Mr. President, you will permit me to do, then I should like to complete that brief part of the case, because after that follows a rather long section.

THE PRESIDENT: Yes.

DR. SIEMERS: I believe I can cut it relatively short with regard to this last key document. Again, it is a document without signature, the author of which, therefore, is not knwon, and without indication as to the date of writing. It is no official transcript; again it pursues a special trend. Early in November 1939 a serious difference arose between Hitler and the General; for Hitler inten ded to start the offensive in the West immediately, whereas the Generals were

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of a different opinion, and apparently hoped that the outbreak of a real World War might still be avoided. Hitler's dissatisfaction and annoyance with his Generals show themselves clearly. In consequences of this, he strives to show, by customary repetition of his former actions, what he has accomplished, and further to show that he has always been in the right. It is really a typical Hitler speech, which corresponds to his public speeches in which he also loved to put on airs and to boast of being gifted with genius. Hitler, after all, belonged to these people who always believe themselves in the right, and avail themselves of every opportunity to prove it. He further took the opportunity of stifling at birth, by threats, resistance in high military circles, resistance which had become known to him, and in this way of establishing his dictatorship It is absolutely significant, when he says literally in this document: I shall not shrink from anything and will destroy everyone who is against me."This has also been recognized by leading foreign military personalities.I refer for example to General Marshall's official report, which speaks about the "Lack in far- reaching planning in military respect" and in particular about the fact that the German High Command did not have an all- embracing strategic plan, and points out in this connection that " Hitler's prestige reached the stage that one no longer dared to oppose his views."

Finally it only remains to be pointed out in this last key -document that at this time the war was already in progress, and that the higher military officers cannot be blamed if in the war they strove in all their plannings to come off victorious. The Allies were also planning at the same time. I refer to the documents RIBBENTROPS Exhibit No. 22 and RAEDER Exhibit Nr. 34. The former document dates from 1 September 1939; it is a confidential latter from General GAMELIN to DALADIER' and contains the basic idea that it is necessary to invade Belgium in order to wage the war outside the French frontier. The latter document deals with military plans in the same wa , in a confidential letter from General GAMELIN to General LELONG, military attache of the French Embassy in London, of 13 November 1939, and also concerns the enterprise in Holland and Belgium planned by the Allies.

(The Tribunal adjourned until 17 July 1946, at 1000 Hours.